

CHAPTER 300

COPYRIGHT

1998-4

This Act came into operation on 14th August, 1998 by Proclamation (S.I. 1998 No. 106).

Amended by:

2004-17

2006-1

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1998

2007

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 300

COPYRIGHT 1998-4

Arrangement of Sections

CITATION

1. Short title

INTERPRETATION

2. Definitions
3. Publication
4. Encrypted broadcast

PART I

COPYRIGHT

Protected Works

5. Requirements for protection
6. Eligible works
7. Qualification for protection: author
8. Qualification for protection: first publication etc.
9. Economic and moral rights

Duration of Copyright

10. Duration: literary work etc.
11. Duration: sound recordings and films
12. Duration: broadcasts and cable programmes
13. Duration: typographical arrangement of editions

PART II

MORAL RIGHTS AND RELATED RIGHTS

Identification with Work

14. Right to be identified as author etc.

Objection to Treatment of Work

15. Right to object to derogatory treatment of work

Related Rights

16. False attribution of work
17. Right to privacy of photographs and films
18. Duration: moral, etc., rights
19. Consent and waiver of rights
20. Application of provisions to joint works
21. Application of provisions to parts of work

PART III

OWNERSHIP AND ASSIGNMENT OF RIGHTS

Ownership of Copyright

22. Ownership of copyright

Assignment of Copyright

23. Assignment and licences
24. Prospective ownership of copyright
25. Exclusive licence
26. Copyright in unpublished manuscript passes under will
27. Moral rights etc. not assignable
28. Transmission of moral rights etc. on death

PART IV

INFRINGEMENT OF RIGHTS

General Provisions

29. Meaning of “action”
30. Provisions of Part subject to other provisions

Infringement of Copyright

31. Acts infringing copyright

Remedies of Copyright Owner

- 32. Action by owner of copyright
- 33. Delivery up: civil proceedings

Remedies of Exclusive Licensee

- 34. Infringement of rights of exclusive licensee
- 35. Infringement where rights concurrent

Infringement of Moral Rights and Related Rights

- 36. Infringement of right to be identified as author or director
- 37. Infringement of right to object to derogatory treatment of work
- 38. Infringement by possession of infringing article
- 39. Acts not infringing section 15
- 40. False attribution of work: infringement of right
- 41. Infringement of privacy right respecting photographs, etc.
- 42. Effect of consent and waiver of rights
- 43. Remedies for infringing moral rights, etc.

Presumptions

- 44. Presumptions where action relates to literary works, etc.
- 45. Presumptions where action relates to sound recordings, films, or computer programmes

Offences

- 46. Offences in respect of dealings which infringe copyright
- 47. Order to deliver up

Supplementary

- 48. Application of provisions as to entry and search
- 49. Restricting importation of infringing copies

PART V

EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

Preliminary

- 50. Interpretation

General Exceptions

- 51. Research and private study
- 52. Criticism, review and reporting
- 53. Determining fair dealing
- 54. Incidental inclusion of protected work

Use of Work for Educational Purposes

- 55. Acts done for purposes of instruction or examination
- 56. Anthologies for educational use
- 57. Recording of broadcasts, etc. by educational establishments

- 58. Restriction on reprographic copying by educational establishments
- 59. Subsequent dealings with authorised copies
- 60. Interpretation of references: regulations
- 61. Supply by librarian of copies of published work
- 62. Supply of copies to other libraries
- 63. Replacing copies of works
- 64. Copying of unpublished work

Exceptions Relating to Public Administration

- 65. Parliamentary and judicial proceedings and statutory inquiries
- 66. Public records

Designs

- 67. Design documents and models
- 68. Where design derived from artistic work is exploited

Works in Electronic Form

- 69. Transfer of works in electronic form

Miscellaneous: Literary, Dramatic, Musical and Artistic Works

- 70. Anonymous and pseudonymous literary etc. works
- 71. Record of spoken work
- 72. Reading or recitation in public

-
73. Representation of artistic works on public display
 74. Reconstruction of buildings
 75. Subsequent work by same artist

Miscellaneous: Sound Recordings, Films and Computer Programmes

76. Rental of sound recordings, computer programmes and films
77. Licensed rental of sound recordings, etc.
78. Playing of sound recordings for purposes of charitable organisations

Miscellaneous: Broadcasts and Cable Programmes

79. Incidental recording for purposes of broadcast or cable programme
80. Recording broadcasts for programme control
81. Recording for archival purposes
82. Reception and re-transmission of broadcast in cable programme service
83. Recording for purposes of time-shifting

Adaptations

84. Adaptations

PART VI

COPYRIGHT LICENSING

Preliminary

85. Interpretation

86. Licensing schemes to which sections 87 to 92 apply

References and Applications Respecting Licensing Schemes

87. Reference of proposed licensing scheme

88. Reference of existing licensing scheme

89. Further reference of scheme

90. Application for grant of licence in connection with licensing scheme

91. Application for review of order as to entitlement to licence

92. Effect of order of Tribunal as to licensing scheme

93. Licences to which sections 94 to 97 apply

94. Reference to Tribunal of proposed licence

95. Reference to Tribunal of expiring licence

96. Application for review of order as to licence

97. Effect of order of Tribunal

Supplementary

98. Matters to be taken into account by Tribunal

99. Royalty payable for rental of sound recording, film, etc.

100. Ministerial order in relation to licensing scheme

PART VII

THE COPYRIGHT TRIBUNAL

- 101. Establishment of Copyright Tribunal
- 102. Jurisdiction of Tribunal
- 103. Regulations respecting proceedings of Tribunal
- 104. Appeal on point of law

PART VIII

RIGHTS IN PERFORMANCE

- 105. Conferment of rights in performance

Performers' Rights

- 106. Consent required for recording or live transmission of performance
- 107. Infringement of performer's rights by use of recording made without consent
- 108. Consent and royalty required for adaptation of recording
- 109. Infringement of performer's rights by importing, possessing etc. illicit recording
- 110. Remuneration

Persons Having Recording Rights

- 111. Consent required for recording of performance subject to exclusive contract

112. Infringement of recording rights by use of recording made without consent

113. Infringement of recording rights by importing, possessing illicit recording

Exceptions to Infringement

114. Permitted acts in relation to performances

115. Fair dealing for criticism etc.

116. Incidental inclusion of performance or recording

117. Acts done to recording or performance for purposes of instruction, etc.

118. Recording of broadcasts and cable programmes by educational establishments

119. Acts done to performance or recording for parliamentary proceedings, etc.

120. Transfer of recording of performance in electronic form

121. Use of recordings of spoken words

122. Playing sound recording as part of activities of charitable organisation, etc.

123. Incidental recording for purposes of broadcast or cable programme

124. Recordings for supervision and control of programmes

125. Recording of broadcast or cable programme for archival purposes

126. Tribunal may consent on behalf of performer

Duration and Transmission of Rights in Performances; Consent

127. Duration of rights in performance

128. Transmission of rights in performance

129. Consent

Remedies for Infringement of Rights in Performances

130. Infringement actionable

131. Delivery up of illicit recording: civil proceedings

Offences

132. Making, dealing with or using illicit recordings

133. Order for delivery up of illicit recording in criminal proceedings

134. False representation of authority to give consent

PART IX

GENERAL

135. Order for disposal of infringing copy of illicit recording

136. Period after which remedy of delivery up not available

137. Time limit for prosecution

138. Powers of members of Police Force

139. Restrictions on entry and search

140. Obstruction of member of Police Force

141. Offences by bodies corporate

- 142. Reciprocity
- 143. Denial of copyright or rights in performances
- 144. International organisations
- 145. Territorial waters and exclusive economic zone
- 146. Act applies to Barbadian ships, aircraft
- 147. Crown bound
- 148. Regulations
- 149. Repeal[*repealed*]
- 150. Equity
- 151. Transitional

**BARBADOS****COPYRIGHT
1998-4**

An Act to revise the law of copyright.

[Commencement: 14th August, 1998]

CITATION**Short title**

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

INTERPRETATION**Definitions**

- 2.(1) For the purposes of 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 programme, includes a version of the programme 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 programme,

- (ii) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work,
- (iii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;

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

“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 person by whom the arrangements necessary for the making of the recording or film are undertaken;
- (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 by whom the arrangements necessary for the creation of the work are undertaken;

“a broadcast” means a transmission by radio communication of visual images or sounds, or both, for reception by the public by any means, including fibre, cable or satellite 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;

“to broadcast” means to transmit by radio communication visual images or sounds, or both, for reception by the public by any means, including fibre, cable or satellite which, notwithstanding that

- (a) subsequent to the initial transmission, but before reception by the public, the images or sounds may be carried on a path provided by a material substance,
- (b) the public receiving or capable of receiving the images or sounds is in a country other than that from which the original transmission took place,

(c) no member of the public actually received the images or sounds, provided only that members of the public could, if in possession of suitable apparatus, receive them;

and “broadcasting” and “re-broadcasting” have corresponding meanings;

“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 two or more places, whether for simultaneous reception or at different times in response to requests by different users, or

(b) for presentation to members of the public,

and which is not, or to the extent that it is not, excepted by regulations made under this Act;

“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 such that the work has no human author;

“computer programme” 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 or musical work, 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 three dimensions if the artistic work is a two-dimensional work, and a reproduction in two dimensions if the artistic work is a three-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” refers to copyright within the meaning of Part I;

“country” includes any territory;

“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;

“exclusive licence” means a licence in writing signed by or on behalf of the owner of copyright in a work authorising the licensee, to the exclusion of all other

persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the 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, and “prospective owner” shall be construed accordingly and, in relation to any such copyright, includes a person prospectively entitled thereto by virtue of an agreement mentioned in section 24;

“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 the rights conferred on the performer or a person having recording rights in relation to the performance pursuant to Part VIII, and which does not fall within any of the exceptions specified in or authorised pursuant to any provision of that Part;

“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,
- (b) any copy of the work that is or is proposed to be imported into Barbados 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;

“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, and
 - (ii) a computer programme,

“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 VIII, 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;

“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;

“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 in the definition of “future copyright”;

“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 habitual 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 a copy of a work is made available

- (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”

- (a) means a process
 - (i) for 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,
 - (i) includes any copying by electronic means, but
 - (ii) does not include the making of a film or sound recording;

“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 142;

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

“Tribunal” means the Copyright Tribunal established under section 101;

“typeface” includes an ornamental motif used in printing;

“unauthorised” 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;

“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;

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

“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, and “written” shall be construed accordingly.

(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 the following principles apply:

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

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, whether by way of sale or otherwise; and
- (b) where the work is a literary, musical, dramatic or artistic work, the making available of copies to the public by means of an electronic retrieval system.

(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) Without affecting subsection (2), references in this Act to the issue of copies of a work in relation to sound recordings, films and computer programmes, are to the act of issuing copies to the public by rental.
- (4) For the purposes of this Act “commercial publication” in relation to a literary, dramatic, musical or artistic work means
- (a) issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public; or
 - (b) making the work available to the public by means of an electronic retrieval system.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) In determining, for the purposes of this Act
- (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 unauthorised publication or the doing of any other unauthorised 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.

PART I

COPYRIGHT

Protected Works

Requirements for protection

5.(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 144 are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

Eligible works

6.(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,

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 shall not be eligible for copyright protection unless it is recorded in writing or in some other form; and any reference in this Act to the time at which a work is made is a reference to the time at which it is so recorded.

(3) 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.

(4) 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.

(5) 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.

(6) 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.
- (7) Copyright shall not subsist in the typographical arrangement of a published edition of, or to the extent that it reproduces the typographical arrangement of, a previous edition.
- (8) 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

- 7.(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 9 and 22.
- (3) In this section “the material time” means in relation to
- (a) an unpublished literary, dramatic, musical or artistic work, 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 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.

8.(1) A literary, dramatic, musical or artistic work, a sound recording or film, or the typographical arrangement of a published edition qualifies for copyright protection if, 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

9.(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 authorise other persons to do any of the following acts in Barbados:

- (a) to copy the work;
- (b) to issue copies of the work to the public;
- (c) 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;
- (d) to broadcast the work or include it in a cable programme service; or
- (e) 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 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 II.

Duration of Copyright

Duration: literary work etc.

10.(1) Subject to the provisions of this section, copyright in any literary, dramatic, musical or artistic work exists for the life of the author and for the 50 calendar years following his death.

(2) When copyright in work referred to in subsection (1) is vested jointly in more than one author, the copyright exists for the life of the last surviving author and for 50 calendar years immediately following the year of his death.

(3) Where the author of a work referred to in subsection (1) is unknown, copyright in that work exists for the 50 calendar years immediately following the 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 exists, 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 50 calendar years following the calendar year in which the work was made.

(5) This section does not apply to copyright that subsists by virtue of section 144.

Duration: sound recordings and films

11.(1) Copyright in a sound recording or film exists for the 50 calendar years immediately following the calendar year in which it was made or, where it is made available to the public before the end of that period, 50 calendar years immediately following the calendar year in which it is so made available.

(2) For the purposes of subsection (1) a sound recording or film is made available to the public when

- (a) it is first published, broadcast or included in a cable programme service;
- (b) in the case of a film or film sound-track, the film is first shown in public.

(3) For the purposes of subsection (2) in determining whether a sound recording or film has been made available to the public, any unauthorised act shall be disregarded.

Duration: broadcasts and cable programmes

12.(1) Copyright in a broadcast or cable programme exists for the 50 calendar years immediately following 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 exists 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

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

PART II

MORAL RIGHTS AND RELATED RIGHTS

Identification with Work

Right to be identified as author etc.

14.(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 literary, dramatic, musical or artistic work 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, 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 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 paragraph (c) of subsection (4), 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, broadcast or included in a cable programme service 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 programme, 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 144, unless the author or director has previously been identified as such in or on published copies of the work.

*Objection to Treatment of Work***Right to object to derogatory treatment of work**

15.(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 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 37 in the circumstances so specified.

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

- (a) a computer programme or to a computer-generated work;
- (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 144 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.

(4) In this Act,

- (a) “derogatory treatment” in relation to a work means any addition to, deletion from, alteration to or adaptation of the work, not being a translation of a literary or dramatic work or an arrangement or transcription of a musical work involving no more than a change of key or register, which amounts to a distortion or mutilation of the work,

or is otherwise prejudicial to the honour or reputation of the author or director, as the case may be; and

- (b) “sufficient disclaimer” means a clear and reasonably prominent indication
 - (i) given at the time of the act; and
 - (ii) 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.

Related Rights

False attribution of work

16.(1) A person has the right

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

(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 40.

Right to privacy of photographs and films

17. Subject to section 41, 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; or

- (c) the work broadcast or included in a cable programme service.

Duration: moral, etc., rights

18.(1) The rights conferred by sections 14, 15 and 17 subsist so long as copyright subsists in the work.

(2) The right conferred by section 16 subsists until the end of the period of 20 calendar years immediately following the calendar year in which the person died.

Consent and waiver of rights

19.(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

20.(1) The right conferred under section 14 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 15 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 19 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 17 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 19 by one of them does not affect the rights of the others.

Application of provisions to parts of work

- 21.** The rights conferred by
- (a) sections 14 and 17 apply in relation to the whole or any substantial part of a work; and
 - (b) sections 15 and 16 apply in relation to the whole or any part of a work.

PART III

OWNERSHIP AND ASSIGNMENT OF RIGHTS

*Ownership of Copyright***Ownership of copyright**

22.(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 Crown to the same extent as if the Crown had been the original creator of the folklore.

(6) The rights of the Crown 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 144.

*Assignment of Copyright***Assignment and licences**

23.(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 (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 copyright shall be construed accordingly.

Prospective ownership of copyright

24.(1) Where by an agreement made in relation to future copyright and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person, then, if on the 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 (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 copyright owner shall be construed accordingly.

Exclusive licence

25. 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

26. 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 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.

Moral rights etc. not assignable

27. The rights conferred under Part II are not assignable.

Transmission of moral rights etc. on death

28.(1) The rights conferred by sections 14, 15 and 17 are not assignable otherwise than 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 15 or 17, 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 19 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 16 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 IV
INFRINGEMENT OF RIGHTS

General Provisions

Meaning of “action”

29. In this Part, “action” includes a counterclaim and references to the plaintiff and to the defendant in an action shall be construed accordingly.

Provisions of Part subject to other provisions

30. This Part has effect subject to the provisions of this Act with respect to

- (a) authorising 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

31.(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 9.

(2) Copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into Barbados 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 into Barbados;
- (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

32.(1) An infringement of copyright is actionable at the suit of the copyright 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 plaintiff 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 plaintiff is not entitled to damages against him.

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

Delivery up: civil proceedings

33.(1) Subject to this section and section 35(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 136(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 135 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 135 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**

34. 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

35.(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 plaintiff 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 33 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 33 as it thinks fit.

Infringement of Moral Rights and Related Rights

Infringement of right to be identified as author or director

36.(1) Subject to subsection (2), the right conferred by section 14 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 14 in relation to a work to the extent that such acts are permitted under Part V 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

37.(1) The right conferred on an author and a director by section 15 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; and for the purposes of this Part, “derogatory treatment” has the same meaning as in section 15(4).

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

- (a) publishes commercially, performs in public, broadcasts or includes in a cable programme service, a derogatory treatment of the work; or
- (b) issues to the public copies of a film or sound recording of or including a derogatory treatment of the work.

(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) broadcasts or includes in a cable programme service 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 form 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, broadcasts or includes in a cable programme service 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, broadcasts or includes in a cable programme service, or issues to the public copies of, a derogatory treatment of the film sound track.

Infringement by possession of infringing article

- 38.(1) The right conferred by section 15 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 37 in circumstances infringing that right.

Acts not infringing section 15

39.(1) The right conferred by section 15 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.
- (3) In this section “sufficient disclaimer” means
- (a) a clear and prominent indication given at the time of the act referred to in subsection (1); and
 - (b) a clear and prominent indication, if the author or director is then identified, appearing with the identification,

that the work has been subjected to treatment to which the author or director has not consented.

False attribution of work: infringement of right

40.(1) Subject to this section, the right conferred on a person by section 16 not to have a literary, dramatic, musical or artistic work 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 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, broadcasts it or includes it in a cable programme service as being the work of a named person; or
 - (b) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service as having been directed by 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 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.

41. The right conferred by section 17 in relation to a commissioned photograph or film is infringed by a person who does or authorises 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 V, would not be a infringement of the copyright in the work.

Effect of consent and waiver of rights

42. It is not an infringement of any right conferred by section 14, 15, 16 or 17 to do any act to which the person entitled to the right has consented pursuant to section 19 or in respect of which he has given a waiver pursuant to that section.

Remedies for infringing moral rights, etc.

43.(1) Any person whose right under section 14, 15, 16 or 17 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 paragraph (a) of subsection (1) 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 relates to literary works, etc.

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

(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 8(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 plaintiff'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 programmes

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

(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 programme, and copies of the programme are issued to the public in electronic form bearing a statement

- (a) that a named person was the owner of copyright in the programme at the date of issue of the copies; or
- (b) that the programme 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 action is brought under this Part with respect to a film, and the film as shown in public, broadcast or included in a cable programme service 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, broadcast or included in a cable programme service 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**

46.(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; or
- (c) imports into Barbados 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) Any 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;
[2004-17]
 - (b) on conviction on indictment to a fine of \$500 000 or to imprisonment for 10 years or to both.
[2004-17]
- (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;
[2004-17]
 - (b) on conviction on indictment to a fine of \$200 000 or to imprisonment for 5 years or to both.
[2004-17]

Order to deliver up

47.(1) The presumptions specified in sections 44 and 45 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 46 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 136; or
 - (b) if it appears to the court unlikely that any order will be made under section 135.
- (3) An appeal lies to the Court of Appeal from an order made under this section.
- (4) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall retain it pending the making of an order or the decision not to make an order under section 135.

Supplementary

Application of provisions as to entry and search

48. For the purposes of this Part, the provisions of sections 138 and 139 apply in respect of the entry and search of any premises.

Restricting importation of infringing copies

- 49.(1)** The owner of the copyright in any published literary, dramatic or musical work 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*.
- (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*, 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 and 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.

(7) Regulations made under subsection (6) are subject to negative resolution.

PART V

EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

Preliminary

Interpretation

50. For the purposes of 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

51. Subject to section 53, fair dealing with a literary, dramatic, musical or artistic work 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

52.(1) Subject to section 53,

- (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

53. 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

54. 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, broadcasting or inclusion in a cable programme service 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

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

56.(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 authorise 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

57.(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 100 for the purposes of this section.

Restriction on reprographic copying by educational establishments

58.(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% 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 authorised by this section if, or to the extent that, licences are available authorising the copying in question and the person making the copies knew or ought to have been aware of that fact.

(4) Where a licence is granted to an educational institution authorising 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

59.(1) Where a copy of a work would be an infringing copy if the making thereof were not authorised under section 55, 57 or 58 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

60.(1) In sections 61 to 64 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 61 and 64, 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

61.(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 paragraph (b) of subsection (1), 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

62.(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) Paragraph (b) of subsection (1) 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 works

63.(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, 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

64.(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

65.(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

66. 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**

67.(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, broadcast or cable programme service anything the making of which was, by virtue of subsection (1), not an infringement of that copyright.

(3) In this section

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

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

Where design derived from artistic work is exploited

68.(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**

69.(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.

Miscellaneous: Literary, Dramatic, Musical and Artistic Works

Anonymous and pseudonymous literary etc. works

70.(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, or in pursuance of 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 50 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 144 and in respect of which an order under that section specifies a copyright period longer than 50 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

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

- (a) reporting current events; or

- (b) broadcasting or including in a cable programme service the whole or part of the work,

it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it, or to copy the record or 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

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

73.(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) broadcasting or including in a cable programme service a visual image of it; or
 - (d) issuing to the public copies, or the broadcasting or including in a cable programme service anything whose making was, by virtue of this section, not an infringement of copyright.

Reconstruction of buildings

74. 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

75. 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.

Miscellaneous: Sound Recordings, Films and Computer Programmes

Rental of sound recordings, computer programmes and films

- 76.** The exclusive right to authorise or prohibit rental vests
- (a) in the owner of the copyright in a sound recording of musical works;

- (b) in the owner of the copyright in respect of the original copies of a computer programme; and
- (c) in the producer of the joint fixation of a film in respect of the original and copies of the film.

Licensed rental of sound recordings, etc.

77.(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 programmes 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 100 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 31 in respect of the rental of infringing copies.

Playing of sound recordings for purposes of charitable organisations

78. 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 purposes of broadcast or cable programme

79.(1) This section applies where by virtue of a licence or assignment of copyright a person is authorised to broadcast from a place in Barbados or a specified country or to include in a cable programme service sent from 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 authorise any of the following for the purposes of the broadcast or cable programme

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

80.(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

81.(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

82.(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) The copyright owner referred to in subsection (1) is entitled to receive from the person providing the cable programme service, reasonable remuneration in respect of the transmission.

(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 purposes of time-shifting

83. 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**

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

PART VI

COPYRIGHT LICENSING

*Preliminary***Interpretation**

85.(1) In this Part

“licence” means any licence that is issued or offered by a licensing body authorising, in relation to works in which copyright subsists, the doing of any act restricted by copyright;

“licensing body” means a society or other organisation that has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for a copyright owner, of licences, and whose objects include the granting of licences covering works of more than one author;

“licensing scheme” means a scheme setting out

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant licences; and
- (b) the terms on which licences would be granted in those classes of case;

“scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) References in this Part 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.

(3) For the purposes of subsection (2), “group” in relation to a company means that company and

- (a) any other company that is its holding company or subsidiary;
- (b) any other company that is a subsidiary of the holding company;
- (c) any company that directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b); and
- (d) any company that is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c).

Licensing schemes to which sections 87 to 92 apply

86. Sections 87 to 92 apply to the following licensing schemes

- (a) licensing schemes operated by licensing bodies in relation 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 relate to licences for

- (i) copying the work,
 - (ii) performing, playing or showing the work in public, or
 - (iii) broadcasting the work or including in it a cable programme service;
- (b) all licensing schemes in relation to the copyright in sound recording, other film sound-tracks when accompanying a film, broadcasts or cable programmes or the typographical arrangement of published editions; and
- (c) licensing schemes in relation to the copyright in sound recordings, films, or computer programmes, so far as they relate to licences for the rental of copies to the public.

References and Applications Respecting Licensing Schemes

Reference of proposed licensing scheme

87.(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

88.(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

89.(1) Where the Tribunal has on a previous reference of a licensing scheme under section 87 or 88, 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

- 90.(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

91.(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

92.(1) A licensing scheme that has been confirmed or varied by the Tribunal under section 87 or 88 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 as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

(3) The Tribunal may direct that the order, so far as it varies the amount of 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 87 or 88 made with respect to a scheme that is certified for any purpose under section 100 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 90 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 as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.
- (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.

Licenses to which sections 94 to 97 apply

93. Sections 94 to 97 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 authorise
 - (i) copying the work;
 - (ii) performing, playing or showing the work in public; or

- (iii) broadcasting the work or including it in a cable programme service;
- (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; and
- (c) all licences in relation to the copyright in sound recordings, films or computer programmes so far as they relate to the rental to copies of the public.

Reference to Tribunal of proposed licence

94.(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

95.(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

96.(1) Where the Tribunal has made an order under section 94 or 95, 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

97.(1) Where the Tribunal makes an order under section 94 or 95 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 as if he had at all material times been the holder

of a licence granted by the owner of the copyright in question on the terms specified in the order.

(2) The 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 94, if assignment is not prohibited under the terms of the Tribunal order; and
- (b) in the case of an order under section 95, if assignment was not prohibited under the terms of the original licence.

(4) The Tribunal may direct that an order under section 94 or 95, or an order under section 96 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 paragraph (a) of subsection (1) 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**

98. Regulations made under section 148 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.

Royalty payable for rental of sound recording, film, etc.

99.(1) An application to settle the royalty or other sum payable in pursuance of section 77 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.

Ministerial order in relation to licensing scheme

100.(1) On the application of any person operating or proposing to operate a licensing scheme for the purposes of section 57, 77 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 57, 77 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 87, 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 87, 88 or 89, 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 VII

THE COPYRIGHT TRIBUNAL

Establishment of Copyright Tribunal

101.(1) The Copyright Tribunal, in this Act referred to as “the Tribunal”, is hereby established for the purposes of this Act.

- (2) The Tribunal shall comprise
- (a) three attorneys-at-law of at least 10 years standing; and
- (b) four other members.

[2006-1]

(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.

[2006-1]

(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 notwithstanding that that Act is not in force.

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

Jurisdiction of Tribunal

102.(1) The functions of the Tribunal are

(a) to hear and determine

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

(ii) any application under section 99 to settle the royalty or other sum payable for rental of a sound recording, film or computer programme;

(b) to keep under review the prescribed rate of royalty payable to a performer in connection with an adaptation of an original recording of his performance; and

(c) to make recommendations to the Minister on the rate of royalties 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) In relation to its functions under subsection (1)(b), the Tribunal may on its own initiative and shall, on a request made in writing by the Minister, enquire into the appropriateness of such rate and make such recommendations to the Minister with respect thereto as the Tribunal thinks fit.

- (3) 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) or (c), 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.

[2006-1]

Regulations respecting proceedings of Tribunal

103.(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 87, 88 or 89 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 104.
- (4) Regulations made under this section are subject to negative resolution.

Appeal on point of law

- 104.**(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 103 may limit the time within which an appeal may be brought.

PART VIII**RIGHTS IN PERFORMANCE****Conferment of rights in performance**

- 105.**(1) Subject to this Part
- (a) a performer has the exclusive right to prevent any person, without the consent of the performer, from exploiting his performance; and
- (b) a person who has recording rights in relation to a performance, has the exclusive right to prevent any person, without his consent, from making a recording of that performance.
- (2) 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.

*Performers' Rights***Consent required for recording or live transmission of performance**

- 106.(1)** A performer's rights are infringed by a person who without his consent
- (a) makes a recording of the whole or any substantial part of a qualifying performance; or
 - (b) broadcasts live, or includes live in a cable programme service, the whole or any substantial part of a qualifying performance.
- (2) In an action for infringement of a performer's rights brought by virtue of this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

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

- 107.** A performer's 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 and royalty required for adaptation of recording

- 108.(1)** A performer's rights are infringed by a person who, without his consent and payment of royalty at the prescribed rate, uses an original recording of a qualifying performance, whether authorised 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 rights by importing, possessing etc. illicit recording

109.(1) A performer’s rights are infringed by a person who, without his consent

- (a) imports into Barbados 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.

Remuneration

110.(1) Where any phonogram the original sound recording of which was lawfully made in Barbados is used

- (a) by way of being made available for commercial purposes to the public;
- (b) by way of a broadcast; or
- (c) by way of any other communication to the public,

the user of the phonogram shall pay to the producer of the phonogram remuneration for the producer and any performer whose performance constitutes any of the aural effects of the phonogram.

(2) When more than one performer is entitled to share the remuneration paid to the producer under subsection (1) for the performer, the amount paid by the producer shall be divided equally among those performers or in the manner and shares agreed among the performers.

Persons Having Recording Rights

Consent required for recording of performance subject to exclusive contract

111.(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

112.(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

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

- (a) imports into Barbados 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.

*Exceptions to Infringement***Permitted acts in relation to performances**

- 114.** 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 115 to 126 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 126.

Fair dealing for criticism etc.

- 115.** 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 53 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

Incidental inclusion of performance or recording

- 116.(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.

117.(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 118 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

118. 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.

119. 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

120.(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 August, 1998.

Use of recordings of spoken words

121.(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.

122. 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

123.(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 paragraph (a) of subsection (2);
 - (b) for all purposes after that condition or the condition mentioned in paragraph (b) of subsection (2) is breached.

Recordings for supervision and control of programmes

124. 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

125.(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 81.

Tribunal may consent on behalf of performer

126.(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) paragraph (a) of subsection (3) of section 132,

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 paragraph (a) of subsection (1) except after the service or publication of such notices as may be required by regulations made under section 103 or as the Tribunal may in any particular case direct;
- (b) under paragraph (b) of subsection (1) 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 and Transmission of Rights in Performances; Consent

Duration of rights in performance

127. The rights conferred by this Part in respect of a performance exist for the 50 calendar years after the end of the year in which the performance occurred.

Transmission of rights in performance

128.(1) The rights conferred by this Part may be assigned or transmitted in accordance with this section.

(2) On the death of a person entitled to performer's 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 rights, shall be construed as references to the person for the time being entitled to exercise those rights.

(4) Where by virtue of paragraph (a) of subsection (2) 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 has been assigned the benefit of an exclusive recording contract or licence to make recording of a performance.

(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.

Consent

129.(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.

Remedies for Infringement of Rights in Performances

Infringement actionable

130.(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; or
- (b) for recovery of damages for the infringement.

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

(3) The remedies provided by this section are in addition to any other sanctions contained in this Part and any other power of the Court.

Delivery up of illicit recording: civil proceedings

131.(1) Where a person has in his possession, custody or control in the course of a business an illicit recording of a performance, a person having performer's rights or recording rights 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 136; and the court shall not make an order under this section unless it also makes an order under section 135 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 135 is not made, retain it pending the making of an order, or the decision not to make an order under that section.

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

Offences

Making, dealing with or using illicit recordings

132.(1) A person commits an offence who, without sufficient consent

(a) makes for sale or hire; or

(b) imports into Barbados otherwise than for his private and domestic use;
or

- (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, or
 - (ii) offers or exposes for sale or hire, or
 - (iii) distributes,

a recording which is, and which he knows or has reason to believe is, an illicit recording.

(2) A person 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
[2004-17]
 - (b) on conviction on indictment to a fine of \$500 000 or to imprisonment for 10 years or to both.
[2004-17]

Order for delivery up of illicit recording in criminal proceedings

133.(1) The court before which proceedings are brought against a person for an offence under section 132 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 136; or
- (b) if it appears to the court unlikely that any order will be made under section 135.

(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 135.

False representation of authority to give consent

134.(1) It is an offence for a person to represent falsely that he is authorised by any person to give consent for the purposes of this Part in relation to a performance unless he believes on reasonable grounds that he is so authorised.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine of \$10 000 or to imprisonment for one year or to both.
[2004-17]

PART IX
GENERAL

Order for disposal of infringing copy of illicit recording

135.(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 33 or 47 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 131 or 133 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 thinks fit; or
- (c) a decision that no order under paragraph (a) or (b) 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 VIII, 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

136.(1) Subject to subsection (2), an application for an order under section 33 or 131 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, or 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

137. 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 Force

138.(1) Subject to subsection (3), a member of the Police Force, hereinafter referred to as an officer, to whom a warrant is issued pursuant to section 139 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; and
 - (ii) 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 139 may, with such assistance as is necessary,
 - (a) break open any outer or inner door of any place which he is authorised by this section to enter and search;
 - (b) forcibly board any vessel, aircraft or vehicle which he is authorised 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 authorised under this section to search until each place has been searched;
 - (e) detain any vessel or aircraft which he is authorised 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

139. 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 Force not below the rank of Sergeant, with such assistance as may be necessary, to enter and search the premises.

Obstruction of member of Police Force

- 140.(1)** Without prejudice to any other written law, any person who
- (a) wilfully obstructs a member of the Police Force 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.

[2004-17]

- (2) A person who, when required to give information to a member of the Police Force 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.

[2004-17]

(3) Nothing in this section shall be construed as requiring any person to give any information that may incriminate him.

Offences by bodies corporate

141. 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

142.(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, 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;
- (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 143(4).

(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 performances

143.(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, sound recordings and films, and 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).

(5) This section does not apply to citizens or nationals of a country that is a member of the Berne Union.

International organisations

144.(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

145.(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

146.(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 (Air Navigation) Regulations, 1984* (S.I. 1984 No. 25).

Crown bound

147. The Crown is bound by this Act.

Regulations

148. The Minister may make regulations

- (a) prescribing anything that is by this Act authorised or required to be prescribed; and
- (b) prescribing anything that is necessary for the purpose of giving effect to this Act.

Repeal

149. *[The Copyright Act (Act 1982-1) is repealed.]*

Equity

150. Nothing in this Act shall affect the operation of any rule of equity relating to breaches of trust or confidence.

Transitional

151. Any copyright or other rights similar to those described in this Act that were vested in any person immediately before 14th August, 1998 continue to be vested in him and are enforceable by him in the same manner as other rights under this Act.