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CHAPTER 323
COPYRIGHT

An Act to make better provision in respect of copyright, to confer rights on performers and others in live performances and for matters connected therewith, and to repeal the Copyright Act, 1956 of the United Kingdom in so far as it applies to The Bahamas. *8 of 1998*

*[Assent 22nd May, 1998]
[Commencement 4th January, 2000]*

**PART I
PRELIMINARY**

1. This Act may be cited as the Copyright Act. Short title.
2. (1) In this Act — Interpretation.
 - “authorised work” means a work on copies or phonorecords of which no natural person is identified as author;
 - “appointed day” means the day appointed by the Minister pursuant to section 1;
 - “artistic works” include two-dimensional and three-dimensional work of fine, graphic and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, architectural plans and technical drawings;
 - “audiovisual works” means works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied;
 - “Berne Convention” means the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris on 24th July, 1971;
 - “building” includes a fixed structure of any kind and a part of a building or fixed structure;

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- “business” includes a trade or profession;
- “cable system” means a facility located in The Bahamas that in whole or in part receives television broadcast signals transmitted within The Bahamas or outside The Bahamas, and diffuses secondary transmissions of such signals or programs by wires, cables or other communication channels to subscribing members of the public who pay for such service;
- “collective work” means a work, such as a periodical issue, anthology, or encyclopaedia, in which a number of contributions, constituting separate and independent works in themselves are assembled into a collective whole;
- “compilation” means a work formed by the collection and assembling of pre-existing materials or of data that is selected, co-ordinated or arranged in such a way that the resulting work as a whole constitutes an original work of authorship and the terms “compilation” includes collective works;
- “computer-generated work” means a work generated by a computer in circumstances such that the work has no human author;
- “computer program” means a set of instructions, whether expressed in words or in schematic or other form, which is capable, when incorporated in a machine-readable medium, of causing a device or machine having information-processing capabilities to indicate, perform or achieve a particular function, task or result;
- “copies” means material objects other than phonorecords in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced or otherwise communicated either directly or with the aid of a machine or device and the term copies include the material object, other than a phonorecord, in which the work is first fixed;
- “copyright” means copyright conferred by Part II of this Act;
- “country” includes any territory;

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- a work is “created” when it is first fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work;
- a “device”, “machine” or “process” means one now known or later developed and the term “process” includes a cable program service;
- “derivative work” means a work based upon one or more pre-existing works such as translation; musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation or any form in which a work may be recast; transformed or adapted and a work consisting of editorial revisions, annotation, elaborations, or other modifications, which as a whole, represent an original work of authorship;
- to “display” a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images non-sequentially;
- “distribution” means the distribution to the public, for commercial purposes, of copies or phonorecords of a work by way of rental, lease, hire, loan or similar arrangement and “distributing” has a corresponding meaning;
- “dramatic work” includes material dramatic in character such as plays, dramatic scripts designed for radio or television broadcasts or a cable programme service, ballets, musical comedies and operas;
- “educational establishment” means any school, college or other educational body designated by the Minister by order either specifically or by reference to a class, for the purposes of this Act;
- “exclusive licence” means a licence in writing signed by or on behalf of the owner of copyright by his duly authorized agent in a work authorizing the

licensee, to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the owner of the copyright;

“exclusive recording contract” means a contract between a performer and another person under which that person is entitled, to the exclusion of all other persons, including the performer, to create copies or phonorecords of one or more of his performances with a view to their being displayed or performed publicly, sold, rented or otherwise commercially exploited;

a work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord; by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration; and a work consisting of sounds, images, or both, that are being transmitted, is “fixed” for the purposes of this Act if the fixation of the work is being made simultaneously with its transmission;

“graphic work” includes —

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

“illicit recording” in relation to a live performance means a copy or phonorecord wherever made, the fixing 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 X; and which does not fall within any of the exceptions specified in or authorized pursuant to any provision of that Part;

the terms “including” and “such as” are illustrative and not limiting;

“infringing copy or phonorecord” in relation to a protected work means —

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- (a) a copy or phonorecord of the work, the making of which is not authorized under or by virtue of any provision of this Act;
 - (b) any copy or phonorecord of the work that is or is proposed to be imported into The Bahamas and its making in The Bahamas would constitute an infringement of copyright in the work in question or a breach of an exclusive licence agreement relating to that work;

“literary work” means works other than audiovisual works expressed in words, numbers, or other verbal or numerical symbols or *indicia*, regardless of the nature of the material objects such as books, periodicals, manuscripts, phonorecords, films, tapes or cards in which they are embodied;

“Minister” means the Minister responsible for Copyrights;

“motion pictures” means audiovisual works consisting of a series of related images, which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;

“musical work” means a work consisting of music, inclusive of accompanying words intended to be sung, spoken or performed with the music;

to “perform” a work means to recite, render, play, dance or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible;

“performance” in relation to the rights conferred under Part X means —

- (a) a dramatic performance,
- (b) a musical performance,
- (c) a reading or recitation of a literary work;
- (d) a choreographic performance,
- (e) 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;

“performer” means any actor, singer, musician, dancer or other person who acts, sings, depicts, delivers, declaims, plays in or otherwise performs, a literary, dramatic or musical 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;

“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 a citizen of The Bahamas and is licensed by the person mentioned in paragraph (a) to reproduce copies or phonorecords of the performance with a view to their being displayed or performed publicly, sold or otherwise commercially exploited or to whom the benefit of such a licence has been assigned;

“phonorecord” means material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sound can be perceived, reproduced or otherwise communicated either directly or with the aid of a machine or device and the term phonorecord includes the material object in which the sounds are first fixed;

“photograph” means the embodiment of light or other radiation in a copy from which an image is produced, perceived, or otherwise communicated either directly or with the aid of a machine or device, and which is not part of a motion picture or other audiovisual work;

“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;

“primary transmission” means a transmission made by a transmission facility in The Bahamas or outside The Bahamas whose signals are being received by a secondary transmission service;

a “pseudonymous” work means a work on the copies or phonorecord of which the author is identified under a fictitious name;

“publication” has the meaning assigned to it by section 3;

to perform or display a work “publicly” means —

- (a) to perform or display it at a place open to the public or at any place where a substantial number outside of a normal circle of a family and its social acquaintances is gathered; or
- (b) to transmit or otherwise communicate a performance or display of the work to a place specified by paragraph (a) or to the public by means of any device or process, whether the section of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times;

“qualified person” —

- (a) in the case of an individual, means a person who is a citizen of, or whose habitual residence or domicile is in The Bahamas, or whose habitual residence or domicile is in a foreign nation that is party to a copyright treaty to which The Bahamas is also a party; and
- (b) in the case of a body corporate, means a body incorporated or established under any written law of The Bahamas or of a foreign nation that is a party to a copyright treaty to which The Bahamas is also a party;

“qualifying performance” means a live performance that —

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- (a) is given by an individual who is a qualified person; or
 - (b) takes place in The Bahamas or in a foreign nation that is a party to a copyright treaty to which The Bahamas is also a party;
- “Registrar” means the person referred to in subsection (1) of section 88;
- “registration” means a registration of a claim of copyright in a work;
- “Registry” means the Copyright Registry referred to in subsection (5) of section 88;
- “rental” means any arrangement under which a copy or phonorecord of a work is made available —
- (a) for payment in money or money’s worth; or
 - (b) in the course of a business, as a part of services or amenities for which payment is made,
- on terms that it will or may be returned;
- “reprographic process” means a process —
- (a) for making facsimile reproductions; or
 - (b) involving the use of a machine or device for reproducing multiple copies,
- and, in relation to a work held in electronic form, includes any reproduction by electronic means, but does not include the reproduction of copies or phonorecords of motion pictures and other audiovisual works or sound recordings respectively;
- “secondary transmission” means the simultaneous transmission of a primary transmission unless delayed for technical reasons;
- “sculpture” includes a cast or model made for purposes of sculpture;
- “sound recording” means works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes or other phonorecords in which they are embodied;
- “supplementary work” for purposes of its definition in “work made for hire”, means a work prepared for publication as a secondary adjunct to a work

by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon or assisting in the use of the other work such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes and indexes;

“to transmit” a performance or display means to communicate it by any device or process whereby images or sound are received beyond the place from which they are sent;

a “transmission programme” means a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit;

“Tribunal” means the Copyright Royalty Tribunal established by section 86;

“unauthorized” when used to describe any act done in relation to a work, means if copyright subsists in the work, done otherwise than by or with the licence of the owner of copyright;

“Universal Copyright Convention” means the Universal Copyright Convention as revised at Paris on July 24, 1971;

“useful article” means an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or convey information and an article that is not normally a part of a useful article is considered a “useful article”;

“work” means those categories of original works of authorship pursuant to section 6 and accordingly “protected work” means a work of any of such categories in which copyright subsists by virtue of this Act;

“work made for hire” means —

- (a) a work prepared by an employee within the scope of his employment;
- (b) a work specially commissioned for use as a contribution to collective work, as a part of a motion picture or other audiovisual work, as a translation, as a compilation, as an

instructional test, as a test, as answer material for a test, as a supplementary work, if the parties expressly agree in written instrument signed by them that the work shall be considered a work made for hire;

- (c) copies and phonorecords created under an exclusive recording contract; however, such copies shall be limited to music videos which incorporates the sound recording in timed relation to visual images;

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

“work of The Bahamas Government” means a work prepared by an officer or employee of the Government of The Bahamas as a part of that person’s official duties;

“work of visual art” means —

- (a) a painting, drawing, print or sculpture existing in a single copy, in a limited edition of one hundred copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of one hundred or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author;
- (b) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of one hundred copies or fewer that are signed and consecutively numbered by the author;

however, a work of visual art does not include —

- (i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, database, electronic information service, electronic publication or similar publication;

- (ii) any merchandising item or advertising, promotional, descriptive, covering or packaging material or container;
- (iii) any portion or part of any item described in subparagraph (i) or (ii);
- (iv) any work made for hire; or
- (v) any work not subject to copyright protection under this Act;

“writing” includes any tangible medium of expression now known or later developed from which original works of authorship can be perceived, reproduced, or otherwise communicated either directly or with the aid of a device or machine, and “written” shall be construed accordingly.

(2) References in this Act to the time at which, or the period during which, a work was created are references to the time or period at or during which it was first fixed.

(3) The term “artistic works” as defined in subsection (1) shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; and the design of a useful article, as defined in this section, shall be considered an artistic work only if, and only to the extent that, such design incorporates artistic features that can be identified separately from and are capable of existing independently of, the utilitarian aspects of the article.

3. (1) Subject to the following provision of this section, for purposes of this Act, publication in relation to a work means the distribution of copies or phonorecords of a work to the public (whether by way of sale or otherwise) including where the work is a literary, musical, dramatic, motion pictures or other audiovisual works, choreographic or artistic work, the making available of copies and phonorecords to the public by means of an electronic retrieval system; and all related expressions shall be construed accordingly.

Publication.

(2) References in this Act to the distribution to the public of copies and phonorecords of a work are to the act of putting into circulation copies and phonorecords not previously put into circulation in The Bahamas or elsewhere, and not to —

- (a) any subsequent distribution, sale, rental or loan of those copies or phonorecords; or

- (b) any subsequent importation of those copies or phonorecords into The Bahamas,

except that in relation to motion pictures and other audiovisual works, the act of distributing copies to the public include any subsequent rental of copies to the public.

(3) In the case of a work of architecture in the form of a building or an artistic work incorporated in a building, construction of the building shall be treated as equivalent to publication of the work.

(4) A public performance or display of a work does not of itself constitute publication.

(5) 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.

(6) For the purposes of this Act, a publication in The Bahamas 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 two publications took place within a period of not more than thirty days.

(7) In determining, for purposes of any provision of this Act —

- (a) whether a work has been published;
- (b) whether a publication of a work was a 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 unauthorized act shall be disregarded.

Lawful reception
of transmission.

4. (1) In relation to the transmission of a work, an encrypted transmission shall be regarded as capable of being lawfully received 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 transmission.

(2) References in this Act to the person making a transmission, transmitting a work or including a work in a transmission 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,

references in this Act to a programme, in the context of transmitted are to any item included in a transmission.

PART II COPYRIGHT

Protected Works

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 as respects

Copyright in general.

- (a) the category of works of authorship; and
- (b) the qualification of the author.

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

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

Category of works of authorship.

- (a) literary works;
- (b) musical works inclusive of any accompanying words;
- (c) dramatic works inclusive of any accompanying music;
- (d) artistic works;
- (e) motion pictures and other audiovisual works;
- (f) choreographic works;
- (g) sound recordings;

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

(2) Works of authorship shall not be eligible for copyright protection unless it is fixed in writing and any reference in this Act to the time which a work is created is a reference to the time at which it is so fixed.

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- (3) The —
 - (a) categories of copyright works specified by this section include compilations and derivative works, but protection for a work employing pre-existing material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully;
 - (b) copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the pre-existing material employed in the work and does not imply any exclusive right in the pre-existing material;
 - (c) copyright in a compilation or derivative work is independent of, and does not affect or enlarge the scope, duration, ownership or subsistence of any copyright protection in the pre-existing material.

(4) In no case does copyright protection for an original work of authorship extend to an idea, concept, process, principle, procedure, system or discovery of things of a similar nature regardless of the form in which it is described, explained, illustrated or embodied in such work.

Qualification for protection: national origin.

7. (1) The works specified by subsections (1) and (3) of section 6 while unpublished, are subject to protection under this Act if the author is a qualified person.

(2) The works specified by subsections (1) and (3) of section 6 when published, are subject to protection under this Act if —

- (a) on the date of first publication, one or more of the authors is a qualified person; or
- (b) the work is first published in The Bahamas or in a foreign nation that, on the date of first publication, is a party to the Universal Copyright Convention; or
- (c) the work is protected under the Berne Convention.

Bahamas Government works.

8. Copyright protection under this Act shall subsist in every work which is eligible for copyright and which is made by or under the direction or control of the Government.

9. (1) By virtue of and subject to the provisions of this Act, the owner of copyright shall have the exclusive right to do or to authorize any of the following —

Nature of copyright protection: economic and moral rights.

- (a) to reproduce the copyright work in copies or phonorecords;
- (b) to distribute copies or phonorecords of the copyright work to the public by sale or other transfer of ownership, or by rental or loan;
- (c) to prepare derivative works based upon the copyright work;
- (d) in the case of a literary, musical, dramatic and choreographic, and motion pictures and other audiovisual works, to perform the copyright work publicly; and
- (e) in the case of a literary, musical, dramatic, choreographic, artistic works, including the individual sequence images of a motion picture audiovisual work, to display the copyright work publicly.

(2) By virtue of and subject to the provisions of this Act the author of a literary, dramatic, musical, choreographic or artistic work that is a protected work shall have in respect of such work, whether or not he is the owner of copyright in the work, the moral rights specified in Part III.

10. (1) Subject to the provisions of this section, copyright in any work expires at the end of the period of seventy years from the end of the calendar year in which the author dies.

Duration of copyright in works of authorship.

(2) Where the author of a work referred to in subsection (1) is anonymous, pseudonymous or the work is made for hire, copyright in that work expires at the end of the period of seventy years from the year of its first publication or a term of one hundred years from the year of its creation, whichever expires first.

(3) Subsection (2) shall not apply if the identity of the author becomes known after the end of the period specified in that subsection and if before the end of such period, the identity of one or more of the authors of any anonymous or pseudonymous work is revealed in the records of the registration made for that work under subsection (1) or (4) of section 33 or in the records provided by this section, the

copyright in the work endures for the term specified by subsection (1) or (5), based on the life of the author or authors whose identity has been revealed.

(4) Any person having an interest in the copyright in any anonymous work may at any time record, in records to be maintained by the Registry for that purpose, a statement identifying one or more of the work and the statement shall also identify the person filing it, the nature of the person's interest, the source of the information recorded, and the particular work affected, and shall comply in form and content with requirements that the Minister may prescribe by regulation.

(5) In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and seventy years after such last surviving author's death.

(6) The provisions of subsections (1) to (4) shall not apply to computer-generated work, the copyright in which expires at the end of the period of seventy years from the end of the calendar year in which the work was created.

(7) Where the country of origin of the work is not The Bahamas and the author of the work is not a citizen of The Bahamas, the duration of the copyright is that to which the work is entitled in the country of origin, provided that it does not exceed the period under subsection (1).

(8) Any person having an interest in a copyright may at any time record in the Registry a statement of the date of death of the author of the copyright work, or a statement that the author is still living on a particular date; the statement shall identify the person filing it, the nature of that person's interest, the source of the information recorded, and shall comply in form and content with requirements that the Minister may prescribe by regulation; the Registrar shall maintain current records of information relating to the death of authors of copyright works, based on such recorded statements and, to the extent that the registrar considers practicable, on data contained in any of the records of the Registry or in other reference sources.

(9) After a period of seventy-five years from the year of the first publication of a work, or a period of one hundred years from its creation, whichever expires first,

any person who obtains from the Registry a certified report that the records provided under subsection (8) disclose nothing to indicate that the author of the work is living, or died less than seventy years before, is entitled to the benefit of a presumption that the author has been dead for at least seventy years; reliance in good faith upon this presumption shall be a complete defence to any action for infringement under this Act.

PART III

MORAL RIGHTS AND RELATED RIGHTS

Identification with Work

11. (1) Subject to subsection (7) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary, choreographic, musical, dramatic or artistic work that is a protected work has the right to be identified as the author of the work in the circumstances specified in this section.

Right to be identified as author.

(2) The author of a literary work or a dramatic work has the right to be identified as such whenever —

- (a) the work or a derivative work thereof, is published or performed publicly; or
- (b) copies or phonorecords including the work are distributed to the public.

(3) The author of a musical work has the right to be identified as such whenever —

- (a) the work is published;
- (b) phonorecords containing a sound recording of the work are distributed to the public; or
- (c) a motion picture, the sound track of which includes the work, is performed publicly or copies of such motion picture are distributed to the public.

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

- (a) the work is published or displayed publicly;
- (b) a motion picture including a visual image of the work is performed in public or copies of such a motion picture are distributed 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 the work are distributed to the public.

(5) The author of a choreographic work has the right to be justified as such whenever —

- (a) the work is published or performed publicly;
- (b) copies or phonorecords containing the work is distributed to the public.

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

(7) Except as may otherwise be explicitly provided by contract, right conferred by this section shall not apply in relation to —

- (a) a computer program, the design of a typeface or a computer-generated work;
- (b) any work created as a work made for hire.

Objection to Treatment of Work of Visual Art

Right to object to derogatory treatment of work of visual art.

12. (1) Subject to subsection (3) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a work of visual art that is a protected work, has the right —

- (a) to prevent the use of his name as the author of the work of visual art in the event of derogatory treatment;
- (b) to prevent any destruction of his work which is of recognised stature;
- (c) not to have the work or any part thereof subjected to derogatory treatment,

and any such right is infringed by any person who does any of the acts specified in section 46 in the circumstances so specified.

(2) The author of a work of visual art shall have the rights conferred by subsection (1) in that work whether or not the author is the copyright owner; and the authors of a joint work of visual art shall be co-owners of the rights conferred by this section.

(3) The rights conferred by subsection (1) shall not apply in relation to —

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

- (b) fair dealing with any work made for the purposes specified in section 60;
- (c) any work created as a work made for hire;
- (d) the modification of a work of visual art which is the result of the passage of time or the inherent nature of the material in which it is fixed;
- (e) the modification of a work of visual art which is the result of conservation of the public presentation including lighting and placement of the work;
- (f) any derogatory treatment of a work incorporated in or made part of a building to which the author consented to the installation of the work.

(4) In this section —

“derogatory treatment” in relation to a work means any intentional distortion, mutilation or other modification of that work which would be prejudicial to its author’s reputation.

Related Rights

13. (1) A person has the right —

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

False attribution of work.

(2) In this section —

“attribution”, in relation to such 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 49.

14. Subject to section 50, a person who for private and domestic purposes commissions the taking of a photograph or the making of audiovisual work has, where the resulting work is a protected in, the right not to have —

Right to privacy of photographs.

- (a) copies of the work distributed to the public;
- (b) the work displayed publicly;
- (c) the work performed publicly;

- (d) the work reproduced in copies other than for archival purposes or for complying with the deposit requirement under section 33 of this Act.

Duration of moral rights and related rights.

Consent and waiver of rights.

15. The rights conferred by sections 11, 12, 13 and 14 subsists so long as copyright subsists in the work.

16. (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 rights under sections 11 and 12.

(2) A right to which subsection (1) refers must be waived by instrument in writing signed by the person giving up the right and the waiver —

- (a) must identify the specific work, and the uses of the work, to which the waiver applies, and waiver shall apply only to the work and uses identified; and

(b) may be expressed to be subject to revocation.

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

Application of provision of joint work.

17. (1) The right conferred under section 11 is, in the case of a work of a joint authorship, a right of each joint author to be identified as joint author.

(2) The right conferred by section 12 is, in the case of a work of a joint authorship, a right of each joint author and his right is satisfied if he consents in writing to the treatment in question.

(3) In the case of a joint work prepared by two or more authors, a waiver of rights under section 16 made by one such author does not affect the rights of the other joint authors.

(4) The right conferred by section 14 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 the right of each is satisfied if he consents in writing to the act in question.

Application of provisions to parts of work.

18. The rights conferred by —

- (a) sections 11 and 14 apply in relation to the whole or any substantial part of a work; and

- (b) sections 12 and 13 apply in relation to the whole or any part of a work.

PART IV
OWNERSHIP AND ASSIGNMENT OF RIGHTS

Ownership of Copyright

19. (1) Subject to the provisions of this section, the author of a protected work is the first owner of any copyright in that work.

Ownership of copyright.

(2) In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this Act and unless the parties have expressly agreed otherwise in written instrument signed by them, that employer or other person owns all of the rights comprised in the copyright.

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

(4) Copyright in each contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution; in the absence of an express transfer of the copyright or any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work and any later collective work in the same series.

20. (1) The ownership of a copyright may be transferred in whole by any means of conveyance or by operation of law, and may bequeathed by will or pass as personal property by the applicable intestate succession.

Transfer of copyright ownership or rights.

(2) Any of the exclusive rights comprised in a copyright, any subdivision of any of the rights specified in section 9, transferred as provided by subsection (1) and owned separately.

(3) When an individual author's ownership of a copyright, or any exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body

or other official organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to copyright, or any of the exclusive rights under a copyright, shall be given effect under this Act.

Ownership of a copyright as distinct from ownership of material object.

21. Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in the work is embodied; transfer of ownership of any material including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyright work embodied in the object; nor in the absence of an agreement, does transfer of ownership of a copyright or any exclusive rights under a copyright convey property rights in any material object.

Exclusive licence.

22. (1) The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this Act.

(2) An exclusive licence whether recorded or not does not survive a transfer of copyright ownership.

Copyright in unpublished copy or phonorecord passes under will.

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

- (a) an original copy that embodies a literary, dramatic, musical, choreographic or artistic work which was not published before the death of the testator; or
- (b) an original phonorecord containing a sound recording or copy of a motion picture or other audiovisual work which was not published before the death of the testator,

then, unless a contrary intention is indicated in the testator's will or a codicil to it, or such copy or phonorecord is subject to a contractual agreement, 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.

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

Transmission of moral rights etc. on death.

25. (1) On the death of a person entitled to a right conferred by section 11, 12, 13 or 14 —

- (a) the right passes to such person as he may by testamentary disposition specifically direct; or

- (b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom copyright passes,

and if, or to the extent that, the right does not pass under paragraph (a) or (b), it is exercisable by his personal representatives.

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

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

- (a) where the right is conferred by section 12 or 14, it is a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and
- (b) any waiver of the right in accordance with section 16 by one of them shall 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 13 is actionable by his personal representatives.

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

26. (1) A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a memorandum of the copyright transfer, is in writing and signed by the owner of the rights conveyed or by such owner's duly authorized agent.

Execution of transfers of copyright ownership.

(2) A certificate of acknowledgement is not required for the validity of a transfer, but is *prima facie* evidence of the execution of the transfer if —

- (a) in the case of a transfer executed in The Bahamas, the certificate is issued by a person authorized to administer oaths within The Bahamas; or

-
- (b) in the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of The Bahamas, or by a person authorized to administer oaths whose authority is proved by a certificate of such an officer.

Recording of
transfer and
other documents.

27. (1) Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Registry if the document filed for recording bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document.

(2) The Registrar shall, upon receipt of a document as provided by subsection (1) and the fee prescribed by subsection (1) of section 95, record the document and return it with a certificate of recording.

(3) Recording of a document in the Registry gives all persons constructive notice of the facts stated in the recorded document, but only if —

- (a) the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Registrar, it would be revealed by a reasonable search under the title or registration number of the work; and
- (b) registration has been made for the work.

(4) As between two conflicting transfers, the one executed first prevails if it is recorded, in the manner required to give constructive notice under subsection (5), within one month after its execution in The Bahamas or within two months after its execution outside The Bahamas, or at anytime before recording in such manner of the later transfer; otherwise the later transfer prevails if recorded first in such manner, and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer.

(5) A non-exclusive licence, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the licence is evidenced by a written instrument signed by the owner of the rights licensed or such owner's duly authorized agent; and if —

-
- (a) the licence was taken before execution of the transfer; or
 - (b) the licence was taken in good faith before recording of the transfer and without notice of it.

PART V
COPYRIGHT NOTICE, DEPOSIT AND
REGISTRATION

28. (1) Whenever a work protected under this Act is published in The Bahamas or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section may be placed on publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device.

Notice copyright
visually
perceptible
copies.

(2) If a notice appears on the copies, it shall consist of the following three elements —

- (a) the symbol (the letter C in a circle), or the word “Copyright”, or the abbreviation “Copr.”;
- (b) the year of first publication of the work; in the case of compilations or derivative works incorporating previously published material, the year of first publication of the compilation or derivative work is sufficient; the year may be omitted where an artistic work, with accompanying text matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewellery, dolls, toys or any useful articles; and
- (c) the name of the owner of copyright in the work, or an abbreviation by which the name can be recognised, or a generally known alternative designation of the owner.

(3) The notice shall be affixed to the copies in such a manner and location as to give reasonable notice of the claim of copyright and after consultation with the Registrar, may prescribe by regulation, as examples, specific methods of affixation and positions of notice on various types of works that will satisfy the requirement, specifications shall not be considered exhaustive.

(4) If a notice of copyright in the form and position specified subsection appears on the published copy or copies to which defendant in a copyright infringement action had access, then no weight shall be given to such a

defendant's defence based on innocent infringement to lessen actual or statutory damages, with the exception of actions provided for in Part VII.

Notice copyright:
phonorecords of
sound
recordings.

29. (1) Whenever a sound recording protected under this Act is published in The Bahamas or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section may be placed publicly distributed phonorecords of the sound recording.

(2) If a notice appears on the phonorecords, it shall consist of following three elements —

- (a) the symbol (the letter P in a circle);
- (b) the year of first publication of the sound recording; and
- (c) the name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognised, or a generally known alternative designation of the owner; and if the producer of the sound recording is named on the phonorecord labels or containers, and no other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice.

(3) The notice shall be placed on the surface of the phonorecord, or on the phonorecord label or container, in such manner and location as to give reasonable notice of the claim of copyright.

(4) If a notice of copyright in the form and position specified by this section appears on the published phonorecord or phonorecords to which a defendant in a copyright infringement action had access, then no weight shall be given to such defendant's defence based on innocent infringement to lessen actual or statutory damages, except as provided for in Part VII.

Publications
incorporating
Bahamas
Government
works.

30. Subsection (4) of section 28 and subsection (4) of section 29 shall apply to works published in copies or phonorecords consisting predominantly of one or more works of The Bahamas Government as well as those portions of the copies or phonorecords embodying any other works protected under this Act.

Notice of
copyright:
contributions to
collective works.

31. A separate contribution to a collective work may bear its own notice of copyright, as provided by sections 28, 29 and 30; however, a single notice applicable to the

collective work as a whole is sufficient to invoke the provisions of subsection (4) of section 28 and subsection (4) of section 29, as applicable with respect to the separate contributions it contains (not including advertisements inserted on behalf of persons other than the owner of copyright in the collective work), regardless of the ownership of copyright in contributions and whether or not they have been previously published.

32. (1) Except as provided by subsection (3), and subject to the provisions of subsection (5), the owner of copyright or of the exclusive right of publication in a work published in The Bahamas shall deposit, within three months after the date of such publication —

Deposit of copies
or phonorecords
for the
Department of
Archives.

- (a) two complete copies of the best edition; or
- (b) if the work is a sound recording, two complete phonorecords of the best edition, together with any printed or other visually perceptible material published with such phonorecords,

but neither the deposit requirement of this subsection nor the acquisition provisions of subsection (4) are conditions of copyright protection.

(2) The required copies or phonorecords shall be deposited in the Registry for the use or disposition of the Department of Archives and the Registrar shall, when requested by the depositor and upon payment of the fee prescribed by section 95, issue a receipt for the deposit.

(3) The Minister may, by regulation, exempt any categories of material from the deposit requirement of this section, or require deposit of only one copy or phonorecord with respect to any categories; such regulations shall provide either for complete exemption from requirement of this section, or for alternative forms of aimed at providing a satisfactory archival record of a work imposing practical or financial hardships on the depositor, where the individual author is the owner of copyright in an artistic work and —

- (a) less than five copies of the work have been published; or
- (b) the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies of the best edition of the work burdensome, unfair, or unreasonable.

(4) At any time after publication of a work as provided by subsection (1), the Registrar may make written demand for the deposit on any person obligated to make the deposit under subsection (1) and unless the deposit is made within three months the demand is received, the person on whom the demand was is liable —

- (a) to a fine of not more than two hundred and fifty dollars for each work;
- (b) to pay into a specifically designed fund in the Treasury the total retail price of the copies or phonorecords demanded, or, if no retail price has been fixed, the reasonable cost of the Registry acquiring them; and
- (c) to pay a fine of not more than two thousand dollars, in addition to any fine or liability imposed under paragraphs (a) and (b), if such person wilfully or repeatedly fails or refuses to comply with such a demand.

(5) With respect to transmission programmes that have been (fixed and transmitted to the public in The Bahamas but have not been published, the Minister may, after consulting with the Registrar and other interested organizations and officials, establish regulations governing the acquisition, through deposit or otherwise, of copies or phonorecords of such programmes for the collection of the Department of Archives, and —

- (a) the Registrar shall be permitted, under the standards and conditions set forth in such regulations, to make a fixation of a transmission programme directly from a transmission to the public and to reproduce one copy or phonorecord for such fixation for archival purposes;
- (b) such regulation shall also provide standards and procedures by which the Registrar may make written demand upon the owner of the right of transmission in The Bahamas for the deposit of a copy or phonorecord of a specific transmission programme; such deposit may, at the option of the owner of the right of transmission in The Bahamas, be accomplished by gift or loan for purposes of reproduction; the regulations established under this subsection shall provide reasonable periods of not less than three months for compliance with a demand, and shall allow for

extensions of such periods and adjustments in the scope of the demand or the methods for fulfilling it; as reasonably warranted by the circumstances; and wilful failure or refusal to comply with the conditions prescribed by such regulations shall subject the owner of the right of transmission in The Bahamas to liability for an amount, not to exceed the cost of reproducing and supplying the copy or phonorecord in question, to be paid into the Consolidated Fund;

- (c) nothing in this subsection shall be construed to require the making or retention, for purposes of deposit, of any copy or phonorecord of an unpublished transmission programme, the transmission of which occurs before the receipt of a specific written demand as provided by paragraph (b);
- (d) no activity undertaken in compliance with regulations prescribed under paragraph (a) or (b) shall result in liability if intended solely to assist in the acquisition of copies or phonorecords under this subsection.

33. (1) At any time during the subsistence of any copyright which was secured before the appointed day and during the subsistence of any copyright secured on or after the appointed day, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the Registry the deposit specified by this section, together with the application and fee specified by 34 and 95; and such registration shall not be a condition of copyright protection.

Copyright registration in general.

(2) Except as provided by subsection (3), the material deposited for registration shall include —

- (a) in the case of an unpublished work, one complete copy or phonorecord;
- (b) in the case of a published work, two copies or phonorecords of the best edition;
- (c) in the case of a work first published outside The Bahamas, one complete copy or phonorecord as so published;
- (d) in the case of a contribution to a collective work, one complete copy or phonorecord of the best edition of the collective work,

and copies or phonorecords deposited for the Department of Archives under section 32 may be used to satisfy the deposit provisions of this section, if they are accompanied by the prescribed application and fee, and by any additional identifying material that the Minister may by regulation, require; the Minister may also prescribe regulations establishing requirements under which copies or phonorecords acquired for Department of Archives under subsection (4) of section 32 otherwise than by deposit, may be used to satisfy the deposit provisions of section.

(3) The Minister may specify by regulation the administrative classes into which works are to be placed for purposes of deposit registration, and the nature of the copies or phonorecords to be deposited in the various classes specified; the regulations may require permit, for particular classes, the deposit of identifying materials instead of copies or phonorecords, the deposit of only one copy or phonorecord where two would normally be required, or a single registration for a group of related works; and this administrative classification of works has no significance with respect to the category of eligible works or the exclusive rights provided by this Act.

(4) Without prejudice to the general authority provided under subsection (3), the Minister may establish regulations specifically permitting a single registration for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, within a twelve month period, on the basis of a single deposit, application, and registration fee, under the following conditions —

- (a) if the deposit consists of one copy of the entire issue of the periodical, or the entire section in the case of the entire issue of the periodical or of the entire section in the case of a newspaper, in which each contribution was published; and
- (b) if the application identifies each work separately, including the periodical containing it and its date of first publication.

(5) The Minister may also establish, by regulation, formal procedures for the filing of an application for supplementary registration, to correct an error in a copyright registration or to amplify the information given in a registration; such application shall be accompanied by

the fee prescribed by section 95 and shall clearly identify the registration to be corrected or amplified. The information contained in a supplementary registration augments but does not supersede that contained in the earlier registration.

(6) Registration for the first published edition of a work previously registered in unpublished form may be made even though the work as published is substantially the same as the unpublished version.

34. The application for copyright registration shall be made on a form prescribed by the Minister and shall include —

Application for
copyright
registration.

- (a) the name and address of the claimant;
- (b) in the case of a work other than an anonymous or pseudonymous work, the name and nationality or domicile of the author or authors, and, if one or more of the authors is dead, the dates of their deaths;
- (c) if the work is anonymous or pseudonymous the nationality of the authors;
- (d) in the case of a work made for hire, a statement to this effect;
- (e) if the copyright claimant is not the author, a brief statement of how the claimant obtained ownership of the copyright;
- (f) the title of the work, together with any previous or alternative titles under which the work can be identified;
- (g) the year in which creation of the work was completed;
- (h) if the work has been published, the date and country of its first publication;
- (i) in the case of a compilation or derivative work, an identification of any pre-existing work or works that it is based on or incorporates and a brief general statement of the additional material covered by the copyright claim being registered;
- (j) any other information regarded by the Minister as being relative to the preparation or identification of the work or the existence, ownership or duration of the copyright.

Registration of
claim and
issuance of
certificate.

35. (1) When, after examination, the Registrar determines that, in accordance with provisions of this Act, the material constitutes copyrightable subject matter and that the other legal and formal requirements of this Act have been met, the Registrar shall register the claim and issue to the applicant a certificate of registration under the seal of the Registry; and the certificate shall contain the information given in the application, together with the number and effective date of registration.

(2) In any case in which the Registrar determines that, in accordance the provisions of this Act, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Registrar shall refuse registration and shall notify the applicant in writing of the reasons for such refusal.

(3) In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute *prima facie* evidence of the validity of the copyright and of the facts stated in the certificate and the evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.

(4) The effective date of a copyright registration is the day on which application, deposit, and fee, are delivered to the Registrar.

Registration and
infringement
actions.

36. (1) Where the deposit application and fee required for registration have been delivered to the Registrar in proper form and registration has been refused, the applicant in an action for infringement of the copyright work may serve notice thereof with a copy of the complaint on the Registrar, and the Registrar may become a party to the action with respect to the issue of registrability of the copyright claim by entering an appearance within sixty days after such notice, but the Registrar's failure to become a party shall not deprive the court to determine that issue.

(2) In the case of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, the copyright owner may, either before or after such fixation takes place, institute an action for infringement under section 40, fully subject to the remedies provided by section 41 and 42, if, in accordance with the requirements that the Minister may prescribe by regulation, the copyright owner —

- (a) serves notice upon the infringer, not less than ten or more than thirty days before such fixation, identifying the work and the specific time and source of its first transmission and declaring an intention to secure copyright in the work; and
- (b) makes registration for the work, if required by subsection (1), within three months of its first transmission.

37. In an action brought for a violation of the rights of an author under section 11 or an action instituted under subsection (2) of section 36, or in any other action for infringement, registration shall not be a prerequisite to such action.

Registration not a prerequisite to actions for infringement.

PART VI INFRINGEMENT OF RIGHTS

General Provisions

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

Meaning of action.

39. This Part shall have effect subject to such provisions of this Act as may authorize the doing of specified acts in relation to a protected right.

This Part subject to other provisions.

Infringement of Copyright

40. (1) The copyright in a work is infringed by any person who, without the licence of the copyright owner, does, or authorizes in relation to that work or any substantial part of that work, any of the acts which the copyright owner has the exclusive right to do pursuant to section 9.

Acts infringing copyright.

(2) Copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into The Bahamas for any purpose other than for his private and domestic use, a copy or phonorecord which he knows or has reason to believe is an infringing copy or phonorecord 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 rents or offers or exposes for sale or rent;
- (c) displays in public or distributes in the course of a business;
- (d) distributes otherwise than in the course of a business, to such an extent as to affect prejudicially the owner of copyright,

a copy or phonorecord which is, and which he knows or has reason to believe is, an infringing copy or phonorecord 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 The Bahamas;
- (c) possesses in the course of a business; or
- (d) sells or rents or offers for sale or rent,

a machine or device specifically designed or adapted for reproducing copies or phonorecords of that work, knowing or having reason to believe that it is to be used to make infringing copies or phonorecords.

(5) Copyright in a work is infringed by a person who, without the licence of the copyright owner, transmits the work, knowing or having reason to believe that infringing copies or phonorecords of the work will be made by means of the reception of the transmission in The Bahamas or elsewhere.

(6) Where the copyright in a literary, dramatic, choreographic 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 so liable for 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 performance of the work in public by means of a machine or device for performing sound recording or motion pictures and other audiovisual works, or receiving visual images or sounds conveyed by electronic means, the persons specified in subsection (8) are also liable for the infringement.

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- (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 machine or device was likely to be so used as to infringe copyright; or
 - (ii) in the case of a machine or device whose normal use involves a public performance he did not believe on reasonable grounds that it would not be so used as to infringe copyright;
 - (b) an occupier of premises who gave permission for the machine or device to be brought onto the premises, if when he gave permission he knew or had reason to believe that the machine or device was likely to be so used as to infringe copyright;
 - (c) a person who supplied copies or phonorecords used to infringe copyright, if when he supplied it he knew or had reason to believe that what he supplied or a reproduction of such copy or phonorecord, was likely to be so used as to infringe copyright.

Remedies for Copyright Owner

41. (1) An infringement of copyright shall be actionable at the suit of the copyright owner; and subject to the provision of this section, any action for such infringement all such relief by way of damages, injunctions, accounts or otherwise, shall be available to the plaintiff as is available in respect of the infringement of other proprietary rights.

Action owner of copyright.

- (2) Except as otherwise provided by this Act, an infringer of copyright is liable for either —
- (a) the copyright owner's actual damages and any additional profits of the infringer, as provided in subsection (3)(a); or
 - (b) statutory damages, as provided in subsection (3)(b).

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- (3) The damages referred to in subsection (2) are as follows —
- (a) the copyright owner is entitled to recover the actual damages suffered by him as a result of the infringement, and any profits of the infringer that are attributable to the infringement and not taken into account in computing the actual damages; and in establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his deductible expenses and the elements of profit attributable to factors other than the copyright work;
 - (b) except as provided by paragraph (c), the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than one thousand dollars or not more than twenty thousand dollars as the court considers just; and for the purposes of this subsection, all the parts of a compilation or derivative work constitute one work;
 - (c) in a case where the copyright owner sustains the burden of proof and the court finds that infringement was committed wilfully, the court in its discretion may increase the award of statutory damages to a sum of not more than fifty thousand dollars; and in a case where the infringer sustains the burden of proof and the court finds that such infringer was not aware and had no reason to believe that his acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than five hundred dollars;
 - (d) the court shall remit statutory damages in any case where an infringer believed that his use of the copyright work was a fair dealing under section 60, if the infringer was an employee or

agent of a non-profit educational establishment, public library, or Department of Archives acting within the scope of his employment who, or such institution, library, or archives itself which, infringed by reproducing the work in copies or phonorecords.

(4) 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 statutory damages against him, but without prejudice to any other remedy.

(5) In any civil action under this Act; the court in its discretion may allow the recovery of full costs by or against any party other than by or against the Government or any officer thereof.

(6) In any civil action under this Act, the court in its discretion may award reasonable counsel and attorney's fee to the prevailing party as part of the cost granted by the court under subsection (5).

42. (1) Subject to the provisions of this section and subsection (5) of section 44, where a person —

- (a) in the course of his business has an infringing copy or phonorecord of a work in his possession, custody or control; or
- (b) has in his possession, custody or control a machine or device specifically designed or adapted for reproducing copies or phonorecords of a particular protected work, knowing or having reason to believe that it has been or is being used to make infringing copies or phonorecords,

Order for
delivery up in
civil proceedings.

the copyright owner may apply to the court for an order that the copy, phonorecord, machine or device be delivered up to or to 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 subsection (1) of section 122; 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 121 for the disposal of the infringing copy, phonorecord, machine or device, as the case may be.

Remedies of Exclusive Licensee

Infringement of rights of exclusive licensee.

43. An exclusive licensee has, except as 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.

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

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

(3) 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 section shall not affect the granting of an interlocutory injunction on the application of either of them.

(4) 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.

(5) A copyright owner shall notify any licensee having concurrent rights before applying under section 42 for an order for the delivery up of infringing copies or phonorecords of a work, and the court may, on the application of the licensee, having regard to the terms of the licence, make such order under section 42 as he thinks fit.

Infringement of Moral Rights and Related Rights

Infringement of right to be identified as the author.

45. (1) Subject to subsection (2), the right conferred by section 11 is infringed by any person who fails to identify the author of a work whenever any action specified in that section occurs in relation to that work.

(2) The following acts shall not constitute an infringement of the right conferred by section 11 in relation to a work to the extent that such acts are permitted under Part VII in relation to the work —

- (a) fair dealing with the work for the purposes of criticism, review or the reporting of current events;
- (b) the incidental inclusion of the work in copies or phonorecords;
- (c) the use of the work for examination purposes;
- (d) acts done for the purposes of Parliamentary or judicial proceedings or proceedings of statutory inquiry;
- (e) acts permitted in relation to anonymous or pseudonymous works on the assumption that copyright in the work has expired or that the author is dead.

46. (1) The right conferred on an author of visual art by section 12 to object to derogatory treatment of his work is infringed where acts described in subsection (2) are done in relation to that work; and for the purposes of this Part, “derogatory treatment” has the same meaning as that specified in subsection (4) of section 12.

Infringement of right to object to derogatory treatment of work.

(2) In the case of a work of visual art, the right is infringed by a person who —

- (a) publishes or displays publicly a derogatory treatment of the work; or
- (b) intentionally or through gross negligence destroys a protected work of visual art of recognised stature.

47. The right conferred by section 12 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 business, displays publicly or distributes; or
- (d) distributes otherwise than in the course of a business, so as to affect prejudicially the honour or reputation of the author;

Infringement by possession of infringing work of visual art.

a work of visual art which is, and which he knows or has reason to believe is an infringing copy.

Acts not
infringing section
12.

48. (1) The right conferred by section 12 is not infringed by any act done for the purpose of —

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

so, however, that, where the author of a work of visual art is identified at the time of the relevant act or has previously been identified in or on published copies, there shall be a sufficient disclaimer.

(2) In subsection (1), “sufficient disclaimer” means a clear and reasonably prominent indication —

- (a) given at the time of the act; and
- (b) if the author is then identified, appearing along with the identification,

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

False attribution
of work:
infringement of
right.

49. (1) Subject to the provisions of this section, the right conferred on a person by section 13 not to have a literary, dramatic, musical, choreographic or artistic work falsely attributed to him as author or a motion picture or other audiovisual work falsely attributed to him as director, is infringed by a person who —

- (a) distributes to the public copies or phonorecords of a work of any of those descriptions in or on which there is a false attribution;
- (b) displays publicly an artistic work or a reproduction of an artistic work in or on which there is a false attribution.

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

- (a) in the case of literary, dramatic choreographic or musical work, performs the work publicly;
- (b) in the case of a motion picture or other audiovisual work, performs it publicly,

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

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

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

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

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

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

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

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

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

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

50. The right conferred by section 14 in relation to a commissioned photograph or audiovisual work is infringed by a person who does or authorizes the doing of any act mentioned in that section in relation to that work; but the right is not infringed by any act which, pursuant to Part VII, would not infringe copyright in the work.

Infringement of privacy right respecting photographs, etc.

51. It is not an infringement of any right conferred under section 11, 12, 13 or 14 to do any act which the person entitled to the right has consented pursuant to section 16 or in respect of which he has given a written waiver pursuant to subsection (2) of that section.

Effect of consent and waiver of rights.

Remedies for Infringement of Moral Rights and Related Rights

Remedies for
infringing moral
rights, etc.

52. (1) The infringement of a right conferred under section 11 or 12 is actionable as a breach of statutory duty owned to the person entitled to the right.

(2) The infringement of a right conferred under section 13 or 14 is actionable as a breach of statutory duty owed to a person entitled to the right, if, thirty days after notification by such person by registered mail, the infringer has failed to cure the infringement.

(3) Where in any action an infringement of a right referred to in subsection (1) or (2) is proved or admitted, the court may order the defendant to publish such correction in such terms and in such manner as the court may direct.

Penalties in
respect of
dealings which
infringe
copyright.

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

- (a) reproduces for sale or rent;
- (b) in the course of a business sells or rents, offers or exposes for sale or rent, displays publicly or distributes;
- (c) imports into The Bahamas 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,

a copy or phonorecord which he knows or has reason to believe is an infringing copy or phonorecord of that work, commits an offence.

(2) Any person who, at the time when copyright subsists in a work by virtue of this Act, makes or has in his possession a machine or device designed or adapted for reproducing copies or phonorecords of that work, knowing that it is to be used to reproduce infringing copies or phonorecords for sale or hire or for use in the course of business, commits an offence.

- (3) Any person who causes —
 - (a) a literary, dramatic, choreographic or musical work to be performed publicly; or
 - (b) a sound recording, motion picture or other audiovisual work to be performed publicly,

knowing or having reason to believe that copyright subsists in the work and that the performance constitutes an infringement of copyright, commits an offence.

(4) Any person who is guilty of an offence under subsection (1) shall be liable —

- (a) on summary conviction to a fine of fifty thousand dollars or to imprisonment for two years or to both such fine and imprisonment;
- (b) on conviction on information to a fine of one hundred thousand dollars or to imprisonment for four years or to both such fine and imprisonment.

(5) Any person who is guilty of an offence under this section, other than an offence under subsection (1), shall be liable —

- (a) on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for one year or to both such fine and imprisonment;
- (b) on conviction on information to a fine of fifty thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

54. (1) Subject to subsection (2), the court before which proceedings are brought against a person for an offence under section 53 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 or phonorecord of a protected work; or
- (b) he had in his possession, custody or control a machine or device specifically designed or adapted for reproducing copies or phonorecords of a particular protected work knowing or having reason to believe that it had been or was to be used to make infringing copies or phonorecords,

order that the infringing copies or phonorecords or machine or device be delivery up to the copyright owner or to such other person as the court may direct.

(2) 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, so however, that the court shall not make an order —

Order to delivery up in criminal proceedings.

- (a) after the time specified in section 123; or
- (b) if it appears to the court unlikely that any order will be made under this section 122.

(3) An appeal shall lie to the Court of Appeal from an order made under this section by a Magistrate's Court.

(4) A person to whom an infringing copy or phonorecord or machine or device 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 122.

Supplementary

Application of provisions as to entry and search.

55. For the purpose of this Part, the provisions of sections 124 and 125 shall apply in respect of the entry and search of any premises.

Provision for restricting importation of infringing phonorecords or copies.

56. (1) The owner of the copyright in any published literary, dramatic, choreographic, artistic 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 request the Comptroller to treat as prohibited goods under the Customs Management Act, during a period specified in the notice, copies of such work which are infringing copies.

Ch. 293.

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

(3) The owner of the copyright in a sound recording or motion picture or other audiovisual work 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 or phonorecords of the work are expected to arrive in The Bahamas at a time and a place specified in the notice; and
- (c) that he requests the Comptroller to treat such copies or phonorecords as prohibited goods under the Customs Management Act.

Ch. 293.

(4) Subject to subsection (5), where a notice has been given in accordance with this section, the importation into The Bahamas of goods to which the notice relates is prohibited; but notwithstanding anything contained in the Customs Management Act, a person is not liable to any penalty under that Act other than forfeiture of the goods by reason that any goods are treated as prohibited goods by virtue of this section.

Ch. 293.

(5) The importation of any machine, device, copy or phonorecord by a person for his private and domestic use is not prohibited under subsection (4).

- (6) A person giving notice under this section shall —
- (a) comply with such conditions as the Minister, after consultation with the Comptroller of Customs, may by regulation prescribe; and
 - (b) satisfy such requirements as may be so prescribed in connection with the giving of the notice, including any requirement 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 at both such times;
 - (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 of Customs may incur in consequence of the notice by reason of, the detention of copies, phonorecords, machine, device or article or anything done to copies, phonorecords, machine, device or article detained;
 - (v) the indemnification of the Comptroller of Customs against any such liability or expenses whether security has been, given or not;
 - (vi) any incidental or supplementary matters,

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

PART VII
EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

Preliminary

Definition of
“sufficient
acknowledge-
ment”.

57. For the purposes of this Part, “sufficient acknowledgement” means an acknowledgement identifying the work in question by its title or other description and identifying the author, unless —

- (a) in the case of a published work, it is published anonymously or the author agreed or required that no acknowledgement of him 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 and
teaching.

58. (1) Subject to section 60, fair dealing with a copyright work, including such use by reproduction in copies or phonorecords for purposes such as research, private study, scholarship or teaching does not infringe copyright in the work.

(2) For the purposes of subsection (1), teaching shall mean instruction at an educational establishment.

Criticism, review
and reporting.

59. (1) Subject to section 60, fair dealing with a protected work —

- (a) for purposes of criticism, comment, parody or review; or
- (b) for the purpose of reporting current events,

does not infringe copyright in the work so long as it is accompanied by sufficient acknowledgement.

(2) No acknowledgement is required in connection with the reporting of current events by means of a sound recording or audiovisual work.

Determining fair
dealing.

60. 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 which appear to it to be relevant, including —

- (a) the nature of the work in question;

- (b) the amount and substantiality 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, including whether such use is of a commercial nature or is for non-profit educational purposes; and
- (d) the effect of the act upon the potential market for, or the commercial value of, the work.

61. Copyright in a work is not infringed —

- (a) by its incidental inclusion in copies, phonorecords, transmission programme; or
- (b) by the distribution to the public of copies or phonorecords or the public performance of anything whose making was not an infringement of copyright by virtue of paragraph (a),

Incidental inclusion of protected work.

and for purposes of this section, a musical work, or so much of a sound recording, broadcast or transmission 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

62. (1) Copyright in a literary, dramatic, musical, choreographic or artistic work is not infringed by its being reproduced in the course of instruction or of preparation for instruction, provided the reproduction is done by a person giving or receiving instruction and is not by means of a reprographic process.

Acts done for purposes of instruction or examination.

(2) Copyright in sound recordings, motion pictures, and audiovisual works, is not infringed by its being reproduced in a single copy or phonorecord in the course of instruction or of preparation for instruction, in the making of motion pictures or motion picture soundtracks, provided the reproduction is done by a person giving the instruction and such copy reproduced is retained by the department of educational establishment in which the instruction is being given.

(3) For the purposes of subsection (2), the educational establishment must be one with an accredited degree programme in motion pictures.

(4) 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.

Collective works
for educational
use.

63. (1) The inclusion in a collective work created specifically for use in educational establishments of a short passage from literary, musical or dramatic works published in copies does not infringe copyright in the work if—

- (a) the collective work is described in the title and in any advertisements thereof distributed by or on behalf of the publisher, as being so intended;
- (b) the work was not itself published for use of educational establishments;
- (c) the collective work consists mainly of public domain works; and
- (d) the inclusion is accompanied by a sufficient acknowledgement.

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

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

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

Fixation of
transmission by
educational
establishment.

64. The transmission of a performance or display may be reproduced in a single copy or phonorecord by an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the work if such performance or display is directly related to the course content.

Restriction on
reproduction by
educational
establishment.

65. (1) Subject to the provisions of this section, the reproduction of copies from published literary, dramatic or musical works may be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work.

(2) Not more than five per cent of any work may be reproduced by or on behalf of an educational establishment by virtue of this section in any quarter, that is to say, in any period 1st January to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October to 31st December.

66. (1) Where a reproduction of a work would be an infringing copy or phonorecord if the making thereof were not authorized under section 62, 64 or 65 and such copy or phonorecord is subsequently dealt with, it shall be treated as an infringing copy or phonorecord for the purposes of that dealing as if that dealing infringes copyright for all subsequent purposes.

Subsequent dealings with authorized copies or phonorecords.

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

Exceptions affecting Libraries and Archives

67. (1) In sections 68, 69, 70 and 71, references to a librarian or archivist shall include references to a person acting on his behalf.

Interpretation of references; regulations.

(2) Regulations made by the Minister may provide that a librarian or archivist who is, pursuant to sections 68, 69, 70 and 71, required to be satisfied as to a matter before making or supplying a copy or phonorecord of a work —

- (a) is entitled to rely on a declaration as to that matter signed by the person requesting the copy or phonorecord, 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 or phonorecord to any person in the absence of a declaration by that person.

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

Distribution by
librarian of
copies or
phonorecords of
published works.

68. (1) The librarian of a prescribed library or the archivist of a prescribed archive may reproduce a single copy or phonorecord work or distribute such copy or phonorecord, if the following conditions are complied with —

- (a) the collections of the library or of the archive are open to the public, or available not only to researchers affiliated with the library or archive or with the institution of which it is a part, but also to persons doing research in a specialised field; and
- (b) the reproduction or distribution of the work includes a notice of copyright.

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

- (a) that copies shall be supplied only to persons satisfying the librarian or archivist that they require them for purposes of research or private study, and will not use them for any other purpose; and
- (b) that persons to whom copies are supplied are required to pay a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

Supply of copies
and
phonorecords to
other libraries.

69. The librarian of a prescribed library or archivist of a prescribed archive may, if the prescribed conditions are complied with, reproduce and distribute to another prescribed library or prescribed archive a single copy or phonorecord of a published work without infringing any copyright in the work.

Replacing copies
of works.

70. (1) The librarian of a prescribed library or archivist of a prescribed archive may, if the prescribed conditions are complied with, reproduce a single copy or phonorecord from any published work in the permanent collection of the library or archive for the purpose of —

- (a) preserving or replacing the item by placing the reproduction in such permanent collection to or in place of the work;
- (b) replacing in the permanent collection of another prescribed library or prescribed archive a work which has been lost, destroyed or damaged,

without infringing the copyright in any work.

(2) The prescribed conditions shall include provisions restricting the reproduction of copies or phonorecords to cases where it is not reasonably practicable to purchase the work in question for the purpose.

71. (1) Subject to subsection (2), the librarian of a prescribed library or archivist of a prescribed archive may, if the prescribed conditions are complied with, reproduce and distribute a single copy or phonorecord or a part of a copy or phonorecord without infringing any copyright in the work.

Reproduction of any unpublished works.

- (2) Subsection (1) shall not apply where —
- (a) the work had been published before the document was in the library or archive; or
 - (b) the copyright owner has prohibited the reproduction of the work,

and at the time the reproduction of the copy or phonorecord, the librarian or archivist ought to have been aware of that fact.

(3) The prescribed conditions shall include the following —

- (a) that copies and phonorecords are supplied only to persons satisfying the librarian or archivist that they require them for purposes of teaching, 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 or phonorecord of the same material; and
- (c) that no person to whom copies are supplied are required to pay 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

72. (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.

Parliamentary and judicial proceedings and statutory inquiries.

(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 authorizing the reproduction of a work which is itself a published report of the proceedings.

(4) Copyright in a work is not infringed by the distribution 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 any written law.

Scope of
exclusive right in
artistic works.

73. (1) Subject to the provisions of subsections (2) and (3), the exclusive right to reproduce a copyright artistic work in copies under section 9 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.

(2) In the case of a work lawfully reproduced in useful articles that have been offered for sale or other distribution to the public, copyright does not include the right to prevent the making, distribution or display of pictures or photographs of such articles in connection with advertisements or commentaries related to the distribution or display of such articles, or in connection with news reports.

(3) In a case in which —

- (a) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the derogatory treatment as described in subsection (4) of section 12; and
- (b) the author consented to the installation of the work in the building in a written instrument that is signed by the owner of the building that specifies that installation of the work may subject the work to a derogatory treatment by reason of its removal,

then rights conferred by subsection (1)(a) and (b) of section 12 shall not apply.

(4) If the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without a derogatory treatment of the work as described in subsection (4) of section 12, the author's rights under subsection (1)(a) and (b) of section 12 shall apply unless —

- (a) the owner has made a diligent, good faith attempt without success to notify the author of the owner's intended action affecting the work of visual art; or
- (b) the owner did provide such notice in writing and the person so notified failed, within forty-two days after receiving such notice, either to remove the work or to pay for its removal.

(5) For the purposes of subsection (4)(a), the owner shall be presumed to have made a diligent, good faith attempt to send notice if the owner sent such notice by registered mail to the author at the most recent address of the author that was recorded with the Registrar pursuant to subsection (7).

(6) If the work is removed at the expense of the author, title to that copy shall be deemed to be in the author.

(7) The Registrar shall establish a system of records whereby any author of a work of visual art that has been incorporated in, or made part of a building, may record his identity and address with the Registry; and the Registrar shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Registry evidence of their efforts to comply with this subsection.

74. (1) The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified in subsection (1)(a), (b) and (c) of section 9 and do not include any right of performance under subsection (1)(d) of section 9.

Extent of
exclusive rights in
sound recording.

(2) The exclusive right of the owner of copyright in a sound recording under subsection (1)(a) of section 9 is limited to the right to duplicate the sound recording in the form of phonorecords, or of copies of motion pictures and other audiovisual works, that directly or indirectly recapture the actual sounds fixed in the recording.

(3) The exclusive right of the owner of copyright in a sound recording under subsection (1)(c) of section 9 is limited to the right to prepare a derivative work in which the actual sounds fixed in a sound recording are rearranged, remixed, or otherwise altered in sequence or quality.

(4) The exclusive rights of the owner of copyright in a sound recording under subsection (1)(a) and (c) of section 9 do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in a copyright sound recording.

(5) The exclusive rights of the owner of copyright in a sound recording under subsection (1)(a), (b) and (c) of section 9 do not apply to educational programmes on television or radio which are distributed or transmitted by or through public broadcasting entities provided that copies or phonorecords are not commercially distributed by or through public broadcasting entities to the general public.

(6) This section does not limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by subsection (1)(d) of section 9.

75. Notwithstanding the provisions of section 9, the following are not infringement of copyright —

- (a) performance or display of a work by instructors or pupils in the course of teaching activities in an educational establishment, in a classroom or similar place of instruction, unless, in the case of a motion picture, or the display of individual images, the performance or display of the work was given by means of a copy that was not lawfully made under this Act, and that the person responsible for the performance knew or had reason to believe it was not lawfully made;
- (b) performance of a non-dramatic, literary or musical work or display of a work, by or in the course of a transmission, if —
 - (i) the performance or display is a regular part of the systematic instructional activities of a governmental body or educational establishment,

Exemption of certain performances and displays.

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- (ii) the performance or display is directly related and is of material assistance to the teaching content of the transmission, and
 - (iii) the transmission is made primarily for —
 - (A) reception in classrooms or similar places of instruction, or
 - (B) reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places of instruction, or
 - (C) reception by officers or employees of governmental bodies as a part of their official duties or employment;
 - (c) performance of a non-dramatic literary or musical work or of a dramatic-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;
 - (d) performance of a non-dramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters or organizers, if —
 - (i) there is no direct or indirect admission charge, or
 - (ii) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions —
 - (A) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent,
 - (B) the notice shall be served on the person responsible for the performance at least seven days before the date of performance, and shall state the reasons for the objection, and

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- (C) the notice shall comply, in form, content and manner of service, with requirements that the Minister, after consultation with the Registrar, may prescribe by regulation;
- (e) communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless —
- (i) a direct charge is made to see or hear the transmission, or
 - (ii) the transmission thus received is further transmitted to the public;
- (f) performance of a non-dramatic musical work by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring;
- (g) performance of non-dramatic literary work, by or in the course of transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of —
- (i) a governmental body, or
 - (ii) a cable system, or
 - (iii) a non-commercial educational broadcast station;
- (h) performance on a single occasion of a dramatic literary work published at least five years before the date of the performance, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped

persons who are unable to read normal printed material as a result of the handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a governmental body.

76. (1) Notwithstanding the provisions of section 9, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of the computer program provided —

Exceptions relating to computer programs.

- (a) that such a new copy or adaptation is created as an essential step in the utilisation of the computer program in conjunction with a machine and that it is used in no other manner; or
- (b) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

(2) Any exact copies prepared in accordance with the provisions of this section may be sold or otherwise transferred, along with the copy from which such copies were prepared, only as part of the sale, or other transfer of all rights in the program.

(3) Adaptations so prepared may be transferred only with the authorization of the copyright owner.

77. 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 acknowledgement.

Reading or recitation in public.

78. (1) The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing or public display of pictures, paintings, photographs or other pictorial representations of the work, if the building in which the work is embodied is located in or is ordinarily visible from a public place.

Exceptions relating to architectural works.

(2) Notwithstanding the provisions of subsection (1)(c) of section 9, the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make

or authorize the making of alterations to such building, and destroy or authorize the destruction of such building.

Exceptions relating to artistic works visible from a public place.

79. (1) The copyright in an artistic work does not include the right to prevent the making, distributing or public display of pictures, paintings, photographs or other pictorial representations of the work if the work is located in or ordinarily visible from a public place.

- (2) This section applies to —
- (a) buildings;
 - (b) sculptures, models of buildings and artistic works, if permanently situated in a public place or in premises open to the public.

Miscellaneous Exceptions relating to Sound Recordings

Compulsory licence for making distributing phonorecords.

80. (1) In the case of non-dramatic musical works, the exclusive rights provided by section 9(1)(a) and (b) to make and distribute phonorecords of such works are subject to compulsory licensing under the conditions specified by this section.

(2) Where phonorecords of a non-dramatic musical work has been distributed to the public in The Bahamas under the authority of the copyright owner, any other person may obtain a compulsory licence to make and distribute phonorecords of the work if such person's primary purpose in making phonorecords is to distribute them to the public for private use and that person —

- (a) notifies the copyright owner or agency acting on behalf of the copyright owner of his intention to obtain a compulsory licence under this section;
- (b) pays royalties at the prescribed rate; and
- (c) complies with such conditions relating to notice, method and time of payment, and other matters, as may be imposed by the copyright owner or an agency which acts on behalf of the copyright owner.

(3) A person may not obtain a compulsory licence for use of the work in the making of phonorecords duplicating a sound recording fixed by another, unless —

- (a) such sound recording was fixed lawfully; and
- (b) the making of the phonorecord was authorized by the owner of copyright in the sound recording.

(4) A compulsory licence includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work, and shall not be subject to protection as a derivative work under this Act, except with the express written consent of the copyright owner.

(5) The prescribed rate provided by subsection (2)(b) shall be payable for every phonorecord made and distributed in accordance with the licence; and a phonorecord is considered “distributed” if the person exercising the compulsory licence has voluntarily and permanently parted with its possession.

(6) A compulsory licence under this section includes the right of the maker of a phonorecord of a non-dramatic musical work under subsection (2) to distribute or authorize distribution of such phonorecords by sale, loan, rental or other transfer of ownership.

81. (1) Notwithstanding the provisions of section 9 and except in the case of a motion picture or other audiovisual work, it is not an infringement of copyright for a transmitting organization entitled to transmit to the public a performance or display of a work, under a licence or transfer of copyright or under limitations on exclusive rights in sound recordings specified by subsection (1) of section 74, to make no more than one copy or phonorecord of a particular transmission programme embodying the performance or display, if —

- (a) the copy or phonorecord is retained and used solely by the transmitting organization that made it, and no further copies or phonorecords are reproduced from it;
- (b) the copy or phonorecord is used solely for the transmitting organization’s own transmissions within its local service area, or for purposes of archival preservation or security; and
- (c) unless preserved exclusively for archival purposes, the copy or phonorecord is destroyed within six months from the date the transmission programme was first transmitted to the public.

Exceptions
respecting
ephemeral
recordings.

(2) Notwithstanding the provisions of section 9, it is not an infringement of copyright for a governmental body or other non-profit organization entitled to transmit a performance or display of a work, under paragraph (b) of section 75 or under limitations on exclusive rights in sound recordings specified by subsection (1) of section 74, to make no more than five copies or phonorecords of a particular transmission programme embodying the performance or display, if —

- (a) no further copies or phonorecords are reproduced from the copies or phonorecords made under this subsection; and
- (b) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are destroyed within two years from the date the transmission programme was first transmitted to the public.

(3) Notwithstanding the provisions of section 9, it is not an infringement of copyright for a governmental body or other non-profit organization to make for distribution no more than one copy or phonorecord, for each transmitting organization specified in paragraph (b) of a particular transmission programme embodying a performance of a non-dramatic musical work of a religious nature, or of a sound recording of such a musical work, if —

- (a) there is no direct or indirect charge for making or distributing any such copies or phonorecords;
- (b) none of such copies or phonorecords is used for any performance other than a single transmission to the public by a transmitting organization entitled to transmit to the public a performance of the work under a licence or transfer of the copyright; and
- (c) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are all destroyed within one year from the date the transmission programme was first transmitted to the public.

(4) Notwithstanding the provisions of section 9, it is not an infringement of copyright for a governmental body or any non-profit organization entitled to transmit a performance of a work under paragraph (g) of section 75,

to make no more than five copies or phonorecords embodying the performance, or to permit the use of any copy or phonorecord by any other governmental body or non-profit organization entitled to transmit a performance of a work under paragraph (g) of section 75, if —

- (a) any such copy or phonorecord is retained and used solely by the organization that made it, or by a governmental body or non-profit organization entitled to transmit a performance under paragraph (g) of section 75, and no further copies or phonorecords are reproduced from it;
- (b) any such copy or phonorecord is used solely for transmissions authorized under section 82, or for purposes of archival preservation or security; and
- (c) the governmental body or non-profit organization permitting the use of any such copy or phonorecord by any other governmental body or other non-profit organization under this subsection does not make any charge for such use.

(5) The transmission programme embodied in a copy or phonorecord made under this section is not subject to protection as a derivative work under this Act except with the express written consent of the owners of copyright in the pre-existing works employed in the programme.

82. Copyright is not infringed by the reproduction or use by a transmitting organization, for the purpose of maintaining supervision and control over programmes and advertisements transmitted by that organization, of copies or phonorecords of those programmes and advertisements.

Recording transmissions for programme control.

83. Where a copyright work is transmitted with the licence of the copyright owner from a place in The Bahamas or outside The Bahamas, any person may, without obtaining the licence of the copyright owner or a waiver of moral rights from the author, incorporate the work (by means of the reception of the transmission) in a cable system:

Reception and re-transmission of broadcast in cable system.

Provided that —

- (a) the person is licensed to operate a cable system in The Bahamas;
- (b) it is a secondary transmission;

- (c) except as may be required by any applicable laws or regulations, the transmission programme in which a copyright work is incorporated is transmitted without alteration of any kind other than substitutions made with the written consent of the primary transmitter; and
- (d) the copyright owner shall be entitled to receive from the person providing the cable service, equitable remuneration at the prescribed rate in respect of the transmission,

and for the purposes of this section, an alteration to a transmission or transmission programme includes the addition thereto of new material not contained in the primary transmission, or the omission from the transmission of any material contained in the primary transmission; and the term material includes a commercial advertisement.

Fixation for purposes of time shifting.

84. The fixing of a transmission in a copy or phonorecord for private and domestic use solely for the purpose of enabling it to be viewed or listened to at a more convenient time is not an infringement of copyright.

Power of Minister to prescribe exception to infringement.

85. (1) Subject to the provisions of this section, the Minister may, by order, provide that the copyright in a work of the description or category specified in the order is not infringed where, in relation to such work, such acts as are specified in the order are done in the circumstances so specified.

(2) The Minister shall not make an order under subsection (1) unless he is satisfied that the acts specified in the order in relation to the work —

- (a) are necessary in the public interest in connection with an event of national importance;
- (b) would not conflict with the normal exploitation of the work; and
- (c) would not unreasonably prejudice the legitimate interest of the owner of the copyright in the work.

(3) An order made under subsection (1) shall make provision for the payment of equitable remuneration to the copyright owner to be agreed upon by the Minister and the copyright owner; and such order may contain such consequential, supplemental or ancillary provisions as

appear to the Minister to be necessary or expedient for the purpose of giving effect to the order.

PART VIII THE COPYRIGHT ROYALTY TRIBUNAL

86. (1) There is hereby established for the purpose of this Act a tribunal to be called the Copyright Royalty Tribunal. Establishment of
Copyright
Royalty
Tribunal.

(2) The provisions of the Schedule shall have effect as to the constitution of the Tribunal and otherwise in relation thereto. Tribunal
Schedule.

87. (1) The functions of the Tribunal shall be — Jurisdiction of
Tribunal.

(a) to keep under review the prescribed rate of royalty payable to the copyright owner in connection with subsection (2)(b) of section 80 so as to —

- (i) afford the copyright owner a fair return for his creative work;
- (ii) maximize the availability of creative work to the public;
- (iii) to minimize any disruptive impact on the structure of the industries involved and on generally prevailing practices of those industries;

(b) 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 event as he may by order designate, or any works or performance in which copyright or other rights subsist;

(c) to receive, allocate and distribute royalties under paragraph (d) of section 83.

(2) In relation to its functions under paragraph (a) of subsection (1), the Tribunal may from time to time on its own initiative and shall, on 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 it thinks fit.

PART IX
THE COPYRIGHT REGISTRY

Organization and
general
responsibilities of
the Copyright
Registry.

88. (1) All administrative functions under this Act, except as otherwise specified, are the responsibility of the Registrar of Copyrights.

(2) The Registrar of Copyrights shall be a counsel and attorney of at least five years standing of the Bahamas Bar appointed by the Governor-General acting in accordance with the advice of the Judicial and Legal Services Commission.

(3) The Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission, may appoint a Deputy Registrar of Copyright who shall assist the Registrar in the discharge of his functions and who may, subject to the directions of the Registrar, perform any of the functions of the Registrar.

(4) The appointment of persons under subsections (2) and (3) shall be made on such terms as to emoluments, allowances and pensions rights as the Governor-General may determine and all such emoluments, allowances and pensions rights shall be made payable out of the Consolidated Fund by warrant in the usual manner.

(5) The Registry of the Registrar of Copyrights shall be known as the Copyright Registry.

(6) The Registrar shall act under the general direction and supervision of the Minister.

(7) The Registrar shall adopt a seal to be used to authenticate all certified documents issued by the Registry.

(8) The Registrar shall make an annual report to the Minister of the work and accomplishments of the Registry during the previous fiscal year.

Copyright
Registry
regulations.

89. The Minister, after consultation with the Registrar, may prescribe, by regulations, for the administration of the functions made the responsibility of the Registrar under this Act.

Effective date of
actions in
Registry.

90. In any case in which time limits are prescribed under this Act for the performance of an action in the Registry, and which the last day of the prescribed period falls on a Saturday, Sunday, or public holiday or other non-business day, the action may be taken on the next succeeding business day, and is effective as of the date when the period expires.

91. (1) Upon their deposit in the Registry under sections 32 and 33, all copies, phonorecords, and identifying material, including those deposited in connection with claims that have been refused registration, are the property of the Government.

Retention and disposition of articles deposited in Registry.

(2) In the case of published works, all copies, phonorecords, and identifying materials are available to the Department of Archives for its collections; and, in the case of unpublished works, the Department of Archives is entitled, under regulations that the Minister, after consultation with the Registrar, may prescribe, to select any deposits for its collections.

(3) The Registrar is authorized, for specific or general categories of works, to make a facsimile reproduction of all or any part of the material deposited under section 33 and to make such reproduction a part of the Registry's records of the registration, before transferring such material to the Department of Archives as provided by subsection (2), or before destroying or otherwise disposing of such material as provided by subsection (4).

(4) Deposits not selected by the Department of Archives under subsection (2) or identifying portions or reproductions of them, shall be retained under the control of the Registry for the longest period considered practicable and desirable by the Registrar and after that period, it is within the discretion of the Registrar to order their destruction or other disposition; but, in the case of unpublished works, no deposit shall be knowingly or intentionally destroyed or otherwise disposed of during its term of copyright unless a facsimile reproduction of the entire deposit has been made a part of the Registry's records as provided by subsection (3).

(5) The depositor of copies, phonorecords or identifying material under section 33, or the copyright owner of record, may request retention, under the control of the Registry, of one or more of such articles for the full term of copyright; and the Minister, after consultation with the Registrar, may prescribe, by regulations, the conditions under which such requests are to be made and granted and shall fix the fee to be charged under subsection (1)(h) of section 95 if the request is granted.

Preparation, maintenance, public inspection and searching of Registry records.

92. (1) The Registrar shall provide and keep in the Registry records of all deposits, registrations, recordings, and other actions taken under this Act, and shall prepare indexes of all such records.

(2) Such records and indexes, as well as the articles deposited in connection with completed copyright registrations and retained under the control of the Registry, shall be open to public inspection.

(3) Upon request and payment of the fee specified by section 95, the Registry shall make a search of its public records, indexes, and deposits, and shall furnish a report of the information they disclose with respect to any particular deposits, registrations or recorded documents.

Registry's records.

93. (1) Copies of any public records kept by the Registry in accordance with this Act may be obtained upon request on payment of the fees specified by section 95.

(2) Copies or reproductions of deposited articles retained, under the control of the Registry shall be authorized or furnished only under the conditions prescribed by regulations.

Registry's forms and publications.

94. (1) The Registrar shall compile and publish at periodic intervals catalogues of all copyright registrations and these catalogues shall be divided into parts in accordance with the various classes of works; and the Registrar may determine; on the basis of practicability and usefulness, the form and frequency of publication of each particular part.

(2) The Registrar shall furnish free of charge upon request, application forms for copyright registration and material of general information in connection with the functions of the Registry.

(3) The Registrar may publish compilations of information, bibliographies, and other material he considers to be of value to the public.

(4) All publications of the Registry shall be furnished to prescribed libraries and, aside from those furnished free of charge, shall be offered for sale to the public at prices based on the cost of reproduction and distribution.

95. (1) The following fees shall be paid to the Registrar — Registry's fees.

- (a) on filing each application under section 33 for registration of a copyright claim or for supplementary registration, including the issuance of a certificate of registration, \$10;
- (b) for the issuance of a receipt for a deposit under section 32, \$2;
- (c) for the recording, as provided by section 27, of a transfer of copyright ownership or other document covering not more than one title, \$10; for additional titles, \$10 for each group of not more than ten titles;
- (d) for the recording, under section 10(4), of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recording, under section 10(8) of a statement relating to the death of an author, \$10 for a document covering not more than one title; for each additional title, \$2;
- (e) for the issuance, under section 93 of an additional certificate of registration, \$5;
- (f) for the issuance of any other certification, \$15 for each hour or fraction of an hour consumed with respect thereto;
- (g) for the making and reporting of a search as provided by section 92, and for any related services, \$20 for each hour or fraction of an hour consumed with respect thereto; and
- (h) for any other special services requiring a substantial amount of time or expense, such fees as the Minister, after consultation with the Registrar, may prescribe on the basis of the cost of providing the service,

and the Minister, after consultation with the Registrar, may prescribe fees for preparing copies of Registry's records, whether or not such copies are certified, on the basis of the cost of such preparation.

(2) The Minister may by order vary any fee prescribed under subsection (1).

(3) The fees prescribed by or under this section are applicable to any work of the Bahamas Government but the Registrar may waive the requirement of this subsection in respect of the Government.

(4) All fees received under this section shall be paid into the Consolidated Fund.

(5) The Registrar may, in accordance with regulations prescribed by the Minister, refund any sum paid by mistake or in excess of the fee required under subsection (1).

Reproduction for use of the blind and physically handicapped.

96. The Minister, after consultation with the Registrar, may prescribe standardised forms and procedures by which, at the time applications covering certain specified categories of non-dramatic literary works are submitted for registration under section 33, the copyright owner may voluntarily grant to the Registry a licence to reproduce the copyright work by means of Braille or similar tactile symbols, or by fixation of a reading of the work in a phonorecord, or both, and to distribute the resulting copies or phonorecords solely for the use of the blind and physically handicapped and under limited conditions to be specified in the standardised forms.

PART X RIGHTS IN LIVE PERFORMANCES

Conferment of rights in live performances.

97. (1) By virtue of, and subject to the provisions of this Part, rights are conferred on —

- (a) a performer, requiring his consent to the exploitation of his performance and
- (b) a person having recording rights in relation to a performance, requiring his consent to the fixing of that performance in copies or phonorecords.

(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.

Performer's Rights

- 98.** A performer's rights are infringed by a person who, without his consent —
- (a) reproduces in copies or phonorecords otherwise than for his private or domestic use, the whole or any substantial part of a qualifying performance; or
 - (b) performs publicly the whole or any substantial part of a qualifying performance.
- 99.** A performer's rights are infringed by a person who, without his consent, displays or performs publicly the whole or any substantial part of a qualifying performance by means of a copy or phonorecord which was fixed without the performer's consent and that person knows or has reason to believe that it was so fixed.
- 100.** (1) A performer's rights are infringed by a person who, without his consent and payment of royalty (which is to be negotiated by the two parties), uses a copy or phonorecord of a qualifying performance (whether authorized or not) for the purpose of preparing a derivative work of the copy or phonorecord.
- (2) In subsection (1), "preparing a derivative work" means a copy or phonorecord in which the performance is accompanied by lyrics or music or performances not contained in the copy or phonorecord in which the performance was first fixed.
- 101.** (1) A performer's rights are infringed by a person who, without his consent —
- (a) imports into The Bahamas 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 copy or phonorecord of a qualifying performance which is, and which that person knows or has reason to believe is an illicit copy or phonorecord.
- (2) Where in an action for infringement of performer's rights brought by virtue of this section a defendant shows that the illicit copy or phonorecord was innocently acquired by him or a predecessor in title of his, the remedy

in damages available against him in respect of the infringement is an amount not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2), “innocently acquired” means that the person acquiring the copy or phonorecord did not know or had no reason to believe that it was an illicit copy or phonorecord.

Rights of Person Having Recording Rights

Consent required for fixation of live performance subject to exclusive contract.

102. A person infringes the rights of a person having recording rights in relation to a live performance who, without his consent, fixes the whole or substantial part of the performance otherwise than for his private and domestic use.

Infringement of recording rights by use of copy or phonorecord fixed without consent.

103.(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent, displays or performs publicly the whole or any substantial part of the performance by means of a copy or phonorecord 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 consent was given had recording rights in relation to the performance.

Infringement of recording rights by importing and possessing illicit recording.

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

- (a) imports into The Bahamas 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 copy or phonorecord of the performance which is, and which that person knows or has reason to believe is, an illicit copy or phonorecord.

(2) Where in an action for infringement of performer’s rights brought by virtue of this section a defendant shows that the illicit copy or phonorecord was innocently acquired by him or a predecessor in title of his, the remedy

in damages available against him in respect of the infringement is an amount not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2), “innocently acquired” means that the person acquiring the copy or phonorecord did not know and had no reason to believe that it was an illicit copy or phonorecord.

Exceptions to Infringement

105. Notwithstanding the rights in performances conferred in this Part, any act done in relation to a copy or phonorecord in circumstances specified hereunder does not constitute an infringement of the rights.

Permitted acts in relation to performances.

106. Fair dealing with a copy or phonorecord of a performance —

Fair dealing for criticism, etc.

- (a) for the purpose of criticism or review of that or another copy or phonorecord of a performance, 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 60 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

107. The rights conferred by this Part are not infringed —

Incidental inclusion of a performance or copy or phonorecord thereof.

- (a) by the incidental inclusion in sound recordings, motion pictures or other audiovisual works, of a performance or copy or phonorecord thereof;
- (b) by anything done in relation to copies or phonorecords or by the public display or performance of anything whose marking was not an infringement of those rights, by virtue of paragraph (a),

and for the purposes of this section, copies or phonorecords of a performance 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, motion picture or other audiovisual work if it is deliberately included.

Reproduction of transmission by educational establishment.

108.(1) Whenever a live performance is transmitted to the public, a reproduction of no more than a single copy or phonorecord may be made by or on behalf of an educational establishment without thereby infringing any of the rights conferred by this Part.

(2) Where a recording which would otherwise be an illicit copy or phonorecord is reproduced in accordance with this section but is subsequently dealt with, it shall be treated as an illicit copy or phonorecord for the purposes of that dealing and if that dealing infringes any right conferred by this Part, for all subsequent purposes.

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

Acts done to performance or copy or phonorecord for Parliamentary proceedings.

109.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;
- (b) the proceedings of a statutory inquiry or the reporting of such proceedings held in public.

Transfer of copy or phonorecord of performance.

110.(1) Where a copy or phonorecord of a live performance has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to reproduce further copies in connection with his use of the copy or phonorecord, then, in the absence any express terms —

- (a) prohibiting the transfer of the copy or phonorecord by the purchaser;
- (b) imposing obligations which 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 which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by this Part, but any copy reproduced by the purchaser which 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 copy 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 copy purchased before the commencement of this Act.

111. The rights conferred by this Part are not infringed by the reproduction or use by a prescribed broadcasting organization for the purpose of maintaining supervision and control over programmes transmitted by that organization, of copies or phonorecords of those programmes.

Recordings for supervision and control of programmes.

112. (1) Subject to the provision of this section, the Minister may, by order, provide that the rights conferred by this Part are not infringed by the doing of such acts in relation to the live performances as are specified in the order, where such acts are done in the circumstances so specified.

Order excepting acts from infringing right under this Part.

(2) The Minister shall not make an order under subsection (1) unless he is satisfied that the acts specified in the order —

- (a) are necessary in the public interest in connection with an event of national importance;
- (b) would not conflict with the normal exploitation of the live performance; and
- (c) would not unreasonably prejudice the legitimate interest of the performer or any person having rights in the performance.

(3) An order made under subsection (1) shall make provision for the payment of equitable remuneration to any person having rights conferred by this Part.

*Duration and Transmission of Rights in Live Performances:
Consent*

113. The rights conferred by this Part continue to subsist in relation to a performance until the end of the period of seventy years from the end of the calendar year in which the live performance takes place.

Duration of rights in live performances.

114. (1) The rights conferred by this Part are not assignable or transmissible, except to the extent that performer's rights are transmissible as provided in this section.

Transmission of rights in live performances.

(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 representative,

and 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.

(3) Where by virtue of paragraph (a) of subsection (2) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the others.

(4) 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 fix copies or phonorecords of a performance.

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

Consent.

115.(1) Consent, for the purposes of this Part, shall be by instrument in writing and may be given in relation to a specific live performance, a specified description of live performances, or performances generally; and may relate to past or future performances.

(2) A person having recording rights in a live performance is bound by any consent given by a person through whom he derives his rights under the exclusive recording contract or licence in question, in the same manner as if the consent had been given by him.

(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 him.

Remedies for Infringement of Rights in Live Performances

116. An infringement of any of the rights conferred by this Part is actionable by the person entitled to the right as a breach of statutory duty.

Infringement actionable as breach of statutory duty.

117.(1) Where a person has in his possession, custody or control, in the course of a business, an illicit recording of a live 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.

Order for delivery up of illicit recordings in civil proceedings.

(2) An application shall not be made after the end of the period specified in section 122; and the court shall not make an order under this section unless it also makes an order under section 121 for the disposal of the copy or phonorecord, or it is of the opinion that there are grounds on which an order under this section could be made.

(3) A person to whom a copy or phonorecord is delivered up in pursuance of an order under this section shall, if an order under section 121 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

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

Criminal liability.

- (a) reproduces for sale or hire;
- (b) imports into The Bahamas otherwise than for his private and domestic use;
- (c) possesses in the course of a business with a view to doing any act infringing the rights conferred by this Part;
- (d) in the course of a business —
 - (i) sells or lets for hire;
 - (ii) offers or exposes for sale or hire; or
 - (iii) distributes,

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

(2) A person commits an offence, who causes a copy or phonorecord of a live performance fixed without sufficient consent to be displayed or performed publicly thereby infringing 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) References in this section to persons having recording rights are to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them.

(5) No offence is committed under subsection (1) or (2) by the 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 who is guilty of an offence under subsection (1) or (2) shall be liable —

- (a) on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for one year;
- (b) on conviction on information to a fine of fifty thousand dollars or to imprisonment for two years.

119.(1) The court before which proceedings are brought against a person for an offence under section 118 may, if satisfied that at the time of arrest or charge he had in his possession, custody or control, in the course of a business, an illicit recording of a performance, order that it be delivered up to a person having performer’s rights or recording rights in relation to the performance or to such other person as the court may direct.

(2) 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, but shall not be made —

Order for delivery up of illicit copy or phonorecord in criminal proceedings.

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- (a) after the end of the period specified in section 122; or
 - (b) if it appears to the court unlikely that any order will be made under section 121.
- (3) An appeal shall lie to the Court of Appeal from an order under this section.
- (4) A person to whom an illicit copy or phonorecord 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 121.

120.(1) It is an offence for a person, without written authorization, to represent falsely that he is authorized by any person to give consent for the purposes of this Part in relation to a performance.

False representation of authority to give consent.

(2) A person who is guilty of an offence under this section is liable on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

PART XI GENERAL

121.(1) An application may be made to the court for —

- (a) an order that an infringing copy, phonorecord, machine or device delivered up in pursuance of an order made under section 42 or 54 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 copy or phonorecord of a live performance delivered up in pursuance of an order under section 117 or 119 shall be —
 - (i) forfeited to such person having performer's rights or recording rights in relation to the performance as the court may direct;
 - (ii) destroyed or otherwise dealt with as the court thinks fit;

Order for disposal of infringing copy or phonorecord or illicit recording.

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 interest;
- (b) where the infringement relates to rights conferred under Part X, whether other remedies available in an action for infringement of those rights would be adequate to compensate the persons entitled to the rights and to protect their interests.

(3) Provision shall be made by regulations as to the service of notice on persons having an interest in the infringing copy or phonorecord, or as the case may be, the illicit copy or phonorecord and any such person is entitled —

- (a) to appear in proceedings for an order under this section, whether or not he was served with notice; and
- (b) to appeal against any order made, whether or not he appeared,

and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in any infringing copy or phonorecord, or as the case may be, an illicit copy or phonorecord, the court shall make such order as it thinks just and may, in particular, direct that such copy or phonorecord or illicit copy or phonorecord be sold, or otherwise dealt with, and the proceeds divided.

(5) If the court decides that no order should be made under this section, the person in whose possession, custody or control the copy or phonorecord or, as the case may be, the recording was before being delivered up or seized, is entitled to its return.

(6) References in this section to a person having an interest in a copy or phonorecord or a recording include

any person in whose favour an order could be made in respect of the copy, phonorecord or, as the case may be, recording under this section.

122. (1) Subject to subsection (2), an application for an order under section 42 or 117 may not be made after the end of the period of three years from the date on which the infringing copy or phonorecord or, as the case may be, the illicit recording in question was made.

Period after which remedy of delivery up not available.

(2) If during the whole or any part of that period 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 any time before the end of the period of three years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

123. No prosecution for an offence under this Act shall be commenced after the expiration of six years after the commission of the offence.

Time limited for prosecution.

124. (1) Subject to subsection (3) of this section and section 125, a member of the Police Force of or above the rank of Inspector may, if he is satisfied that there is reasonable cause to believe that an offence against this Act is being committed, give directions to any police officer authorizing him to —

Powers of members of Police Force.

- (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 police 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 recordings; and
- (d) seize, remove or detain —
 - (i) any article which appears to the police officer to be an infringing copy or an illicit recording or any other article which appears to him to be intended for use for making such copies or recording, 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) A police officer to whom directions have been given under subsection (1) may —
- (a) break open any outer or inner door of any place which he is authorized by this section to enter and search;
 - (b) forcibly board any vessel, aircraft or vehicle which he is authorized under this Act to stop, board and search;
 - (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act;
 - (d) detain any person found in any place which he is authorized under this section to search until such place has been searched;
 - (e) detain any vessel or aircraft which he is authorized under this section to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;
 - (f) detain any vehicle which he is authorized under this Act to stop and search until it has been searched.
- (3) It shall be the duty of any police officer in the execution of any directions given under subsection (1) to produce the instrument 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 the entry and search of domestic premises.

125.(1) No domestic premises shall be entered and searched pursuant to section 124 unless a magistrate has issued a warrant under subsection (2).

(2) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any domestic premises any article which may be seized, removed or detained under any provision of this Act, issue a warrant authorizing a member of the Police Force not below the rank of Sergeant to enter and search the premises and such member may call upon any police officer to assist him in entering and searching the premises.

(3) In this section “domestic premises” means any premises or any part thereof, used exclusively or mainly as a dwelling.

126. (1) Without prejudice to any other written law, any person who —

Obstruction of members of Police Force.

- (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 to 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 ten thousand dollars or to imprisonment for one year.

(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 five thousand dollars or to imprisonment for six months.

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

127. 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 was purporting 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.

Offences by bodies corporate.

128. (1) If it appears to the Minister that the laws of a country fail to give adequate protection to Bahamian works or Bahamian performances or fail to 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

Denial of copyright or rights in performance.

those matters) the Minister may, by order, make provision in relation to that country in accordance with subsection (2).

(2) An order made for the purposes of this section shall designate the country concerned and may provide either generally or in relation to such classes of cases 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 the commencement of this Act) if; at the time of the first publication of those works or the giving of the first performance, as the case may be, the authors of the works or the performers were or are —

- (a) citizens of that country, not being at that time persons whose habitual residence is in The Bahamas or other 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 Bahamian works or Bahamian performances in consequence of which the order is being made.

(4) This section applies to literary, dramatic, musical, choreographic, and artistic works, sound recording and motion pictures and other audiovisual works, and for the purposes of this section —

“Bahamian performances” means —

- (a) performances given by individuals who are citizens or habitual residents of The Bahamas; or
- (b) performances that take place in The Bahamas;

“Bahamian works” means —

- (a) works created by individuals who are citizens or habitual residents of The Bahamas; or
- (b) works which are created in The Bahamas.

129.(1) This Act applies to things done on a Bahamian ship or Bahamian aircraft as it applies to things done in The Bahamas.

Application to
Bahamian ships
and aircraft.

(2) in this section “Bahamian ship” and “Bahamian aircraft” means respectively, a ship or aircraft registered in The Bahamas.

130. This Act binds the Crown.

Act binds Crown.
Regulations.

131. The Minister may make regulations prescribing such matters as are required or permitted by this Act to be prescribed or as are necessary or desirable to be prescribed for giving effect to this Act.

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

Savings.

133. (1) Where immediately prior to the appointed day copyright subsists in The Bahamas in any work by virtue of the former Copyright Act ¹, such copyright shall continue to subsist and the person entitled thereto by virtue of that Act shall be the owner thereof under and subject to this Act and in particular —

Transitional.

- (a) the duration of such copyright;
- (b) the acts comprised within the exclusive rights attaching to such copyright; and
- (c) the effect upon the ownership of such copyright of any event or transaction occurring or of any contract or agreement made on or after the appointed day, shall be governed by this Act.

(2) Where, on the appointed day copyright subsists in The Bahamas by virtue of subsection (1) of section 19 of the former Copyright Act in any record, perforated roll or other contrivance by virtue of which sounds may be mechanically produced, such copyright shall continue —

- (a) to subsist for the remainder of the period for which it would have subsisted if this Act had not been passed; and
- (b) in relation to any such record, perforated roll or contrivance, to have the meaning and effect it would have had if this Act had not been passed.

(3) No act done before the appointed day is actionable by virtue of the conferment of the rights specified in Part III.

(4) The right conferred by section 11 to be identified as the author of a work, and the right conferred by section

¹ Ch. 298 in the 1987 edition of The Statute Law of The Bahamas.

12 to object to derogatory treatment of such work, shall not apply —

- (a) in relation to a literary, dramatic, musical, choreographic or artistic work of which the author died before the appointed day; or
- (b) in relation to motion picture or other audiovisual work created before the appointed day.

(5) The rights in relation to a literary, dramatic, musical, choreographic or artistic work existing before the appointed day do not apply —

- (a) where copyright first vested in the author, to anything which, by virtue of an assignment of copyright made or licence granted before the appointed day, may be done without infringing copyright;
- (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.

(6) The right to privacy conferred by section 14 in respect of photographs and audiovisual works does not apply to photographs or audiovisual works created, before the appointed day.

(7) Where an act done before the appointed day was an infringement of copyright but is not an infringement of copyright under this Act, then, proceedings in respect of that act may be taken as if this Act had not been passed.

(8) An act done before the appointed day shall not be an infringement of copyright or right in performances conferred by this Act if that act would not, but for the passing of this Act, have constituted an infringement.

(9) Proceedings for infringement of copyright instituted but not disposed of before the appointed day shall be disposed of as if this Act had not been passed.

(10) Proceedings under this Act for infringement may be taken notwithstanding that the alleged infringement occurred before the appointed day.

SCHEDULE (Section 86)

1. The Tribunal shall consist of the following members —

- (a) a person from the artistic community;
- (b) a counsel and attorney; and
- (c) a public accountant.

2. (1) The members of the Tribunal shall be appointed by the Minister by instrument in writing, and, subject to the provisions of this Schedule, shall hold office for a period of three years, but shall be eligible for reappointment.

(2) The Minister shall elect a chairman from among the members appointed and such chairman shall serve for a term of one year.

(3) Any vacancy in the Tribunal shall not affect its powers and shall be filled, for the unexpired term of appointment, in the same manner as the original appointment was made.

3. A member of the Tribunal may at any time resign his office by instrument in writing and such resignation shall take effect as from the date of the receipt by the Minister of such instrument.

4. The Minister may by instrument in writing at any time revoke the appointment of any member of the Tribunal if —

- (a) he has become bankrupt;
- (b) he is incapacitated by physical or mental illness; or
- (c) he is unfit to perform his duties as a member.

5. The chairman and other members of the Tribunal shall be paid such remuneration (whether by way of honorarium, salary or fees) as the Minister may determine.

6. The name of all members of the Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette*.

7. The Minister may appoint a Secretary and such other staff (whether on a full-time or a part-time basis) as appears to the Minister to be necessary to assist the Tribunal on such terms and conditions (including salaries, allowances, other remuneration and disciplinary control) as the Minister may determine.