

INTELLECTUAL PROPERTY (MISCELLANEOUS PROVISIONS) ACT, 1998

Number 28 of 1998

ARRANGEMENT OF SECTIONS

Section

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ACTS REFERRED TO

Copyright Act, 1963	1963, No. 10
Copyright (Amendment) Act, 1987	1987, No. 24
Patents Act, 1992	1992, No. 1

AN ACT TO AMEND THE COPYRIGHT ACT, 1963, AND THE PATENTS ACT, 1992, AND TO PROVIDE FOR RELATED MATTERS. [*7th July, 1998*]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definitions.

1.—In this Act—

“Act of 1987” means the Copyright (Amendment) Act, 1987;

“Act of 1992” means the Patents Act, 1992;

“Principal Act” means the Copyright Act, 1963.

Amendment of section 26 of Principal Act.

2.—The Principal Act is hereby amended in respect of any action instituted after the passing of this Act by the substitution for **section 26** of the following section:

“Presumptions.

26.—(1) In any action brought by virtue of this Part of this Act the presumptions set out in [subsections \(2\) to \(7\)](#) of this section shall apply.

- (2) (a) Copyright shall be presumed to subsist in a work unless the contrary is proved.
- (b) Where the subsistence of the copyright in a work is proved or admitted, or is presumed under [paragraph \(a\)](#) of this subsection, the plaintiff shall be presumed to be the owner or exclusive licensee of the copyright, unless the contrary is proved.
- (3) Where—
- (a) a name purporting to be that of the author of a work or of the owner or exclusive licensee of the copyright, as the case may be, appears on the work, or
- (b) a work bears or incorporates a statement, label or other mark indicating that a named person is the author of the work or the owner or exclusive licensee of the copyright, as the case may be,

the name, statement, label or mark shall be admissible as evidence of the fact stated or indicated which shall be presumed to be correct unless the contrary is proved.

- (4) The person named or in respect of whom a statement, label or other mark appears on or is borne on or incorporated in a work in accordance with [subsection \(3\)](#) of this section shall be presumed not to have made the work—
- (a) in the course of employment referred to in [subsections \(2\), \(3\) and \(4\) of section 10](#) of this Act,
- (b) under the direction or control of certain international organisations referred to in [section 44](#) of this Act, or
- (c) under the direction or control of the Government or a Minister of the Government referred to in [section 51](#) of this Act or a Minister of State.
- (5) Where a work purports to be a work of joint authorship, [subsections \(2\), \(3\) and \(4\)](#) of this section shall apply in relation to each person purporting to be one of the authors of the work.
- (6) Where no name purporting to be that of the author of the work or of the owner or exclusive licensee of the copyright, as the case may be, appears on the work or where the work does not bear a statement, label or other mark in accordance with [subsection \(3\)](#) of this section but—
- (a) the work qualifies for copyright protection by reference to the country in which it was first published, and
- (b) a name, statement, label or other mark purporting to be that of the publisher appears on copies of the work as first published,

then, the person whose name, statement, label or other mark so appears shall be presumed to have been the author of the work or the owner or exclusive licensee of the copyright, as the case may be, at the time of the publication, unless the contrary is proved.

- (7) Where the author of a work is dead or the identity of the author cannot be ascertained by reasonable enquiry, it shall be presumed, unless the contrary is proved—
 - (a) that the work is an original work, and
 - (b) that the claims made by the plaintiff as to which publication was the first publication of the work and as to the country in which the work was first published are correct.
- (8) The presumptions set out in [subsections \(2\) to \(7\)](#) of this section shall apply to the same extent in any actions relating to an infringement alleged to have occurred before the date on which copies of a work were published.
- (9) References in this section to ‘work’ mean any work or subject-matter to which an action brought by virtue of this Part of this Act relates.”.

Amendment of section 27 of Principal Act.

3.— **Section 27** (amended by the Act of 1987) of the Principal Act is hereby amended in respect of offences under that section committed after the passing of this Act—

(a) by the substitution for **subsection (9)** of the following subsection:

“(9)(a) A person guilty of an offence under **subsection (1)** (amended by the Copyright (Amendment) Act, 1987) or (2) of this section shall be liable—

- (i) on summary conviction, to a fine not exceeding £1,500 in respect of each infringing copy or to imprisonment for a term not exceeding 12 months, or both, or
- (ii) on conviction on indictment, to a fine not exceeding £100,000 or to imprisonment for a term not exceeding five years, or both.

(b) A person guilty of an offence under **subsection (3)** or **(8)** (amended by the Copyright (Amendment) Act, 1987) of this section shall be liable—

- (i) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months, or both, or
- (ii) on conviction on indictment, to a fine not exceeding £100,000 or to imprisonment for a term not exceeding five years, or both.”,

and

(b) by the deletion of **subsections (10)** (amended by the Act of 1987) and (10A) (inserted by the Act of 1987).

Amendment of section 6 of Act of 1992.

4.— **Section 6** of the Act of 1992 is hereby amended by the substitution for **subsection (3)** of the following subsection:

“(3) The Office shall be under the control of the Controller who shall act under the general superintendence and direction of the Minister.”.

Amendment of section 97 of Act of 1992.

5.— **Section 97** of the Act of 1992 is hereby amended—

(a) by the substitution for **subsection (1)** of the following subsection:

“(1)(a) The Government shall appoint as occasion arises a person to the office of Controller for a term of 5 years on such terms and conditions as shall be specified by the Government when making the appointment.

(b) A person appointed under [paragraph \(a\)](#) of this subsection, whose term of office expires otherwise than by reason of the person being removed from office, shall be eligible for reappointment.

(c) Notwithstanding [paragraphs \(a\)](#) and [\(b\)](#) of this subsection, a person appointed to the office of Controller shall retire on attaining the age of 65 years.

(d) Without prejudice to [paragraphs \(a\)](#), [\(b\)](#) and [\(c\)](#) of this subsection, the person holding office as Controller, immediately before the commencement of this section, shall hold that office on the same terms and conditions, including conditions as to superannuation or other allowance or gratuity, as specified by the Government when making his appointment to that office.”.

(b) by the substitution for **subsection (3)** of the following subsection:

“(3) Subject to the Controller being in good health at the time of appointment and notwithstanding that the Controller is appointed without a certificate from the Civil Service Commissioners, the Controller shall, during his term of office, be deemed to be employed in the Civil Service of the State.”.

(c) by the insertion after **subsection (3)** of the following subsection:

“(3A) The Office shall be located at such a place in the State as may be designated from time to time by the Minister, and the functions of the office of Controller shall be discharged at that place, subject to such exceptions as the Minister may from time to time specify in writing.”.

(d) by the insertion after **subsection (4)** of the following subsection:

“(4A) Notwithstanding [subsection \(1\)](#), the Government may remove from the office of Controller a person who has become incapable through ill-health of effectively performing the duties of Controller or for stated misbehaviour or whose removal appears to the Government to be necessary for the effective performance of the functions of Controller.”,

(e) by the substitution for [subsection \(5\)](#) of the following subsection:

“(5) Any act or thing directed to be done by or to the Controller under this Act or any other enactment may be done by or to any officer authorised by the Minister.”,

and

(f) by the substitution for [subsection \(6\)](#) of the following subsection:

“(6) An authorisation under [subsection \(5\)](#)—

(a) may be made subject to such directions as the Minister may specify, and

(b) may at any time be modified or revoked by the Minister.”,

and the section as so amended is set out in the Table to this section.

TABLE

97.—(1)(a) The Government shall appoint as occasion arises a person to the office of Controller for a term of 5 years on such terms and conditions as shall be specified by the Government when making the appointment.

(b) A person appointed under [paragraph \(a\)](#) of this subsection, whose term of office expires otherwise than by reason of the person being removed from office, shall be eligible for reappointment.

(c) Notwithstanding [paragraphs \(a\)](#) and [\(b\)](#) of this subsection, a person appointed to the office of Controller shall retire on attaining the age of 65 years.

(d) Without prejudice to [paragraphs \(a\)](#), [\(b\)](#) and [\(c\)](#) of this subsection, the person holding office as Controller, immediately before the commencement of this section, shall hold that office on the same terms and conditions, including conditions as to superannuation or other allowance or gratuity, as specified by the Government when making his appointment to that office.

(2) The Controller shall receive such remuneration as the Minister for Finance shall determine.

(3) Subject to the Controller being in good health at the time of appointment and notwithstanding that the Controller is appointed without a certificate from the Civil Service Commissioners, the Controller shall, during his term of office, be deemed to be employed in the Civil Service of the State.

(3A) The Office shall be located at such a place in the State as may be designated from time to time by the Minister, and the functions of the office of Controller shall be discharged at that place, subject to such exceptions as the Minister may from time to time specify in writing.

(4) Whenever the Controller is temporarily unable to attend to his duties or his office is vacant, the Minister may appoint a person to perform the duties of the Controller during such inability or vacancy, and every person so appointed shall for as long as the appointment remains in force have all the powers of the Controller under this Act and as otherwise determined by law and shall receive such remuneration as the Minister shall, with the sanction of the Minister for Finance, direct.

(4A) Notwithstanding [subsection \(1\)](#), the Government may remove from the office of Controller a person who has become incapable through ill-health of effectively performing the duties of Controller or for stated misbehaviour or whose removal appears to the Government to be necessary for the effective performance of the functions of Controller.

(5) Any act or thing directed to be done by or to the Controller under this Act or any other enactment may be done by or to any officer authorised by the Minister.

(6) An authorisation under [subsection \(5\)](#)—

- (a) may be made subject to such directions as the Minister may specify, and
- (b) may at any time be modified or revoked by the Minister.

Short title and commencement.

6.—(1) This Act may be cited as the Intellectual Property (Miscellaneous Provisions) Act, 1998.

(2) [Sections 4](#) and [5](#) of this Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
