

1994, No. 143
**An Act to consolidate and amend
the law relating to copyright**

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1994, No. 143

**An Act to consolidate and amend
the law relating to copyright**

[15 December 1994

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—

(1) This Act may be cited as the Copyright Act 1994.

(2) Except as provided in sections 27 (2) and 144 (5) of this Act, this Act shall come into force on the 1st day of January 1995.

2. Interpretation—

(1) In this Act, unless the context otherwise requires,—

“Adaptation”,—

(a) In relation to a literary or dramatic work, includes—

(i) A translation of the work from one language to another:

(ii) A version of a dramatic work in which it is converted into a literary work or, as the case may be, of a literary work in which it is converted into a dramatic work:

(iii) A version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine, or similar periodical:

(b) In relation to a literary work that is a computer program, includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code, otherwise than incidentally in the course of running the program:

(c) In relation to a musical work, means an arrangement or transcription of the work:

“Article”, in relation to an article in a periodical, includes an item of any description:

“Artistic work”—

(a) Means—

- (i) A graphic work, photograph, sculpture, collage, or model, irrespective artistic quality; or
 - (ii) A work of architecture, being a building or a model for a building; or
 - (iii) A work of artistic craftsmanship, not falling within subparagraph (i) or subparagraph (ii) of this definition; but
- (b) Does not include a layout design or an integrated circuit within the meaning of section 2 of the Layout Designs Act 1994:
- “Authorised”, with respect to anything done in relation to a work, means done—
- (a) By or with the licence of the copyright owner; or
 - (b) Pursuant to section 62 of this Act:
- “Broadcast” means a transmission, whether or not encrypted, of a programme by wireless communication, where the transmission is—
- (a) Capable of being lawfully received, in New Zealand or elsewhere, by members of the public; or
 - (b) For presentation to members of the public in New Zealand or elsewhere;—
- and “broadcasting” has a corresponding meaning:
- “Building” includes—
- (a) Any fixed structure; and
 - (b) A part of a building or fixed structure:
- “Business” includes a trade or profession:
- “Collective work” means—
- (a) A work of joint authorship; or
 - (b) A work in which there are distinct contributions by different authors or in which works, or parts of works, of different authors are incorporated:
- “Compilation” includes—
- (a) A compilation consisting wholly of works or parts of works; and
 - (b) A compilation consisting partly of works or parts of works; and
 - (c) A compilation of data other than works or parts of works:
- “Computer-generated”, in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work:
- “Convention country”, except in Part IX of this Act, means a country that is a party to a convention or other international instrument relating to copyright to which New Zealand is also a party:
- “Copying”—
- (a) Means, in relation to any description of work, reproducing or recording the work in any material form; and
 - (b) Includes, in relation to a literary, dramatic, musical, or artistic work, storing the work in any medium by any means; and
 - (c) Includes, in relation to an artistic work, the making of a copy in 3 dimensions of a two-dimensional work and the making of a copy in 2 dimensions of a three-dimensional work; and
 - (d) Includes, in relation to a film, television broadcast, or cable programme, the making of a photograph of the whole or any substantial part of and image forming part of the film, broadcast, or cable programme;—
- and “copy” and “copies” have corresponding meanings:
- “Copyright licence” means a licence to do, or authorise the doing of, any restricted act:
- “Copyright work” means a work of any of the descriptions in section 14 (1) of this Act in which copyright exists:
- “Country” includes every territory for whose international relations the Government of that country is responsible:

“Crown”—

- (a) Means Her Majesty the Queen in right of New Zealand; and
- (b) Includes a Minister of the Crown, a government department, and an Office of Parliament; but
- (c) Does not include—
 - (i) A Crown entity; or
 - (ii) A State enterprise named in the First Schedule to the State-Owned Enterprises Act 1986:

“Crown entity” has the same meaning as it has in section 2 (1) of the Public Finance Act 1989:

“Director”, in relation to a copyright work that is a film, includes any person nominated by the director of the film to exercise the director’s rights under Part IV of this Act if—

- (a) The nomination is in writing and signed by the director; and
- (b) The nomination is made before the completion of the making of the film; and
- (c) The person nominated makes a creative contribution to the making of the film:

“Dramatic work” includes—

- (a) A work of dance or mime; and
- (b) A scenario or script for a film:

“Educational establishment” means—

- (a) Any school to which the Education Act 1989 or the Private Schools Conditional Integration Act 1975 applies;
- (b) Any—
 - (i) Special school; or
 - (ii) Special class; or
 - (iii) Special clinic; or
 - (iv) Special service—

established under section 98 (1) of the Education Act 1964:

- (c) Any special institution within the meaning of section 92 (1) of the Education Act 1989:
- (d) Any early childhood centre within the meaning of section 308 (1) of the Education Act 1989:
- (e) Any—
 - (i) Institution; or
 - (ii) Private training establishment; or
 - (iii) Government training establishment—

within the meaning of section 159 (1) of the Education Act 1989, that is not conducted for profit:

- (f) Any body, or class of body, that is not conducted for profit and that is approved by the Minister of Education as an educational establishment for the purposes of this Act by a notice published in the *Gazette*:

“Electronic” means actuated by electric, magnetic, electro-magnetic, electro-chemical, or electro-mechanical energy; and “in electronic form” means in a form usable only by electronic means:

“Employed” means employed under a contract of service or a contract of apprenticeship; and “employee”, “employer”, have corresponding meanings:

“Exclusive licence” means a licence in writing, signed by or on behalf of a copyright owner, authorising the licensee, to the exclusion of all other persons (including the copyright owner), to exercise a right that would otherwise be exercisable exclusively by the copyright owner:

“Facsimile copy” includes a copy that is reduced or enlarged in scale:

“Film” means a recording on any medium from which a moving image may by any means be produced:

- “Future copyright” means copyright that will or may come into existence in respect of a future work or a class of future work or on the occurrence of a future event:
- “Government” means the Executive Government of New Zealand:
- “Government department” means any department or instrument of the Government, or any branch or division of any such department or instrument; but does not include—
- (a) A body corporate or other legal entity that has the power to contract:
 - (b) An Office of Parliament:
 - (c) The Public Trust Office:
 - (d) The Export Guarantee Office:
- “Graphic work” includes—
- (a) Any painting, drawing, diagram, map, chart, or plan; and
 - (b) Any engraving, etching, lithograph, woodcut, print, or similar work:
- “Instruction” means—
- (a) Giving a lesson, either in person or by correspondence, to a student or a group of students, at an educational establishment or elsewhere; or
 - (b) Receiving a lesson, either in person or by correspondence and either alone or in a group of students, at an educational establishment or elsewhere:
- “International organisation” means an organisation the members of which include one or more states:
- “Judicial proceedings” includes—
- (a) Proceedings before any court, tribunal, or person having authority to decide any matter affecting a person’s legal rights or liabilities; and
 - (b) Proceedings before any other body that is prescribed by regulations made under this Act as a judicial body for the purposes of this Act:
- “Lawful user”, in relation to a computer program, means a person who has a right to use the program, whether under a copyright licence or otherwise:
- “Licensing body” means a body of persons (whether corporate or unincorporate) that, as copyright owner or prospective copyright owner or as agent for a copyright owner,—
- (a) Negotiates copyright licences; and
 - (b) Grants copyright licences, including licences that cover the works of more than one author:
- “Licensing scheme” means a scheme setting out—
- (a) The classes of cases in which the operator of the scheme, or the person on whose behalf the operator acts, is willing to grant copyright licenses; and
 - (b) The terms on which copyright licences would be granted in those classes of cases;—
- and for the purpose of this definition a “scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name:
- “Literary work” means any work, other than a dramatic or musical work, that is written, spoken, or sung; and includes—
- (a) A table or compilation; and
 - (b) A computer program:
- “Material time”,—
- (a) In relation to a literary, dramatic, musical, or artistic work, means,—
 - (i) In the case of an unpublished work, when the work is made or, if the making of the work extends over a period, a substantial part of that period; and
 - (ii) In the case of a published work, when the work is first published or, if the author has died before that time, immediately before his or her death; and
 - (b) In relation to a sound recording or film, means when the work is made or, if the making of the work extends over a period, a substantial part of that period; and

- (c) In relation to a broadcast, means when the broadcast is made; and
- (d) In relation to a cable programme, means when the programme is included in a cable programme service; and
- (e) In relation to a typographical arrangement of a published edition, means when the edition is first published:

“Minister” means the Minister of Justice:

“Ministerial inquiry” includes the proceedings of a committee set up by the Government or a Minister or Ministers to inquire into or advise on any matter:

“Musical work” means a work consisting of music, exclusive of any words intended to be sung or spoken with the music or any actions intended to be performed with the music:

“National Archives” has the same meaning as it has in the Archives Act 1957:

“New Zealand” includes Tokelau:

“Office of Parliament” means—

- (a) The Parliamentary Commissioner for the Environment (and that Commissioner’s office):
- (b) The Office of Ombudsmen:
- (c) The Audit Office (including the Audit Department):
- (d) The Parliamentary Counsel Office:

“Performance”, except in Part IX of this Act,—

- (a) In the case of a literary work that is a lecture, address, speech, or sermon, includes delivery of that work; and
- (b) In general, includes any mode of visual or acoustic presentation of a literary, dramatic, musical, or artistic work, including presentation of the work by means of a sound recording, film, broadcast, or cable programme:

“Photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced; but does not include a film or part of a film:

“Plate” includes any stereotype, stone, block, mould, matrix, transfer, negative, or other similar appliance:

“Prescribed foreign country” means any country (other than New Zealand)—

- (a) To which section 230 of this Act applies; or
- (b) That is declared by Order in Council made under section 232 of this Act to be a foreign country to which any provision of this Act applies; and, with respect to the application of any provision of this Act to such a country, the provision shall be read subject to the terms of that Order in Council:

“Proceedings” includes a counterclaim; and references to the plaintiff and to the defendant in proceedings shall be construed accordingly:

“Published edition” means a published edition of the whole or any part of one or more literary, dramatic, or musical works:

“Regulations”—

- (a) Has the same meaning as it has in section 2 of the Acts and Regulations Publication Act 1989; and
- (b) Includes any instruments that have, pursuant to section 6A of the Regulations Act 1936 or section 14 of the Acts and Regulations Publication Act 1989, been printed or published as if they were regulations:

“Rental” means any arrangement under which a copy of a work is made available—

- (a) For payment (in money or money’s worth); or
- (b) In the course of a business, as part of services or amenities for which payment is made,—
on terms that it will or may be returned:

“Reprographic copy” means a copy made by a reprographic process; and “reprographic copying” has a corresponding meaning:

“Reprographic process” means a process—

- (a) For making facsimile copies; or
- (b) Involving the use of an appliance for making multiple copies;—

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

“Restricted act” means any of the acts described in section 16 of this Act:

“Sculpture” includes a cast or model made for purposes of sculpture:

“Sound recording” means—

- (a) A recording of sounds, from which the sounds may be reproduced; or
 - (b) A recording of the whole or any part of a literary, dramatic, or musical work, from which sounds reproducing the work or part may be produced,—
- regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced:

“Statutory inquiry” means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under an enactment:

“Sufficient acknowledgement”, in relation to a work, means an acknowledgement identifying—

- (a) The work by its title or other description; and
- (b) The author of the work, unless,—
 - (i) In the case of a published work, it is published anonymously;
 - (ii) In the case of an unpublished work, it is not possible by reasonable inquiry to ascertain the identity of the author:

“Telecommunications system” means a system for conveying visual images, sounds, or other information by electronic means:

“Transcript” means a written record of words spoken on a recording:

“Tribunal” means the Copyright Tribunal continued by section 205 of this Act:

“Unauthorised”, with respect to anything done in relation to a work, means done otherwise than—

- (a) By or with the licence of the copyright owner; or
- (b) Pursuant to section 62 of this Act:

“Wireless communication” means the sending of electro-magnetic energy over paths not provided by a material substance constructed or arranged for that purpose:

“Working day” means any day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and
- (b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year:

“Writing” includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded; and “written” has a corresponding meaning.

(2) References in this Act to the time at which a literary, dramatic, or musical work is made are to the time at which the work is recorded, in writing or otherwise.

Cf. Copyright, Designs and Patents Act 1988, ss. 1 (2), 3 (1), 3 (2), 4, 5 (1), 6 (1), 8 (1), 16 (1), 19 (2), 21 (3), 21 (4), 92 (1), 178 (U.K.); 1962, No. 33, ss. 2 (1), 3 (6), 3 (8), 17 (1), 24 (5), 26 (9), 36 (1); 1989, No. 44, s. 2

3. Associated definitions for purposes of broadcasting—

(1) For the purposes of this Act, an encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members

of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.

(2) References in this Act to a programme, in relation to broadcasting, are to the visual images, sounds, or other information transmitted.

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

(a) To the person transmitting the programme, if he or she has responsibility to any extent for its contents; and

(b) To any person providing the programme, when that person makes with the person transmitting it the arrangements necessary for its transmission.

(4) For the purposes of this Act, in the case of a broadcast by satellite transmission,—

(a) The place from which the broadcast is made is the place from which the signals carrying the broadcast are transmitted to the satellite; and

(b) The person making the broadcast is the person who transmits those signals to the satellite.

(5) References in this Act to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunications system.

Cf. Copyright, Designs and Patents Act 1988, s. 6 (2)–(5) (U.K.); Copyright Act 1968, s. 22 (6) (Aust.)

4. Meaning of “cable programme service”, and associated definitions—

(1) In this Act, unless the context otherwise requires,—

“Cable programme” means any item included in a cable programme service:

“Cable programme service” means a transmission service where the transmission is—

(a) For reception at 2 or more places, either simultaneously or at different times, in response to requests by different users; or

(b) For presentation to members of the public; but does not include a transmission service that is, or so far as it is, excepted by or under any provision of subsections (2) to (4) of this section:

“Transmission service” means a service that consists wholly or mainly in sending visual images, sounds, or other information by means of a telecommunications system, otherwise than by wireless communication.

(2) A cable programme service does not include—

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

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

(i) No person except the person carrying on the business is concerned in the control of the equipment used for the purposes of the telecommunications system through which the service operates; and

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

(iii) The system is not connected to any other telecommunications system:

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

(i) All the equipment used for the purposes of the telecommunications system through which the service operates is under his or her control; and

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

(iii) The system is not connected to any other telecommunications system:

(d) A transmission service where—

(i) All the equipment used for the purposes of the telecommunications system through which the service operates is situated in, or connects, premises that are in the occupation of a single occupier; and

(ii) The system is not connected to any other telecommunications system,—
except where the service operates as part of the amenities provided for residents or inmates of premises run as a business:

(e) A transmission service that is, or to the extent that it is, run for persons providing broadcasting or cable programme services or providing programmes for such services.

(3) The Governor-General may, from time to time, by Order in Council, amend subsection (2) of this section by—

(a) Varying any exclusion and making such transitional provisions in relation to the variation as appear to the Governor-General to be necessary; or

(b) Repealing any exclusion and making such transitional provisions in relation to the repeal as appear to the Governor-General to be necessary; or

(c) Adding a new exclusion.

(4) Where any amendment is made to subsection (2) of this section by an Order in Council made under subsection (3) of this section, the amendment shall expire—

(a) On the date specified in the Order in Council for the expiry of the Order in Council; or

(b) At the end of a period of 5 years commencing with the day on which the amendment comes into force,—

whichever is the earlier.

(5) References in this Act to the inclusion of a cable programme in a cable programme service are to the transmission of the programme as part of the service.

(6) References in this Act to the person including a work in a cable programme, including a work in a cable programme service, or including a cable programme in a cable programme service, are to the person providing the cable programme service.

Cf. Copyright, Designs and Patents Act 1988, s. 7 (1)–(3), (5) (U.K.); 1962, No. 33, s. 2 (4)

5. Meaning of “author”—

(1) For the purposes of this Act, the author of a work is the person who creates it.

(2) For the purposes of subsection (1) of this section, the person who creates a work shall be taken to be,—

(a) In the case of a literary, dramatic, musical, or artistic work that is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken:

(b) In the case of a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken:

(c) In the case of a broadcast, the person making the broadcast or, in the case of a broadcast that relays another broadcast by reception and immediate retransmission, the person making that other broadcast:

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

(e) In the case of a typographical arrangement of a published edition, the publisher.

(3) The author of a work of any of the descriptions referred to in subsection (2) of this section may be a natural person or a body corporate.

Cf. Copyright, Designs and Patents Act 1988, s. 9 (1)–(3) (U.K.)

6. Meaning of “work of joint authorship”—

(1) In this Act, the term “work of joint authorship” means a work produced by the collaboration of 2 or more authors in which the contribution of each author is not distinct from that of the other author or authors.

(2) A broadcast shall be treated as a work of joint authorship in any case where more than one person is to be taken as making the broadcast.

(3) References in this Act to the author of a work shall be construed in relation to a work of joint authorship as a reference to all the authors of the work.

(4) Where, in relation to a work of joint authorship, copyright would not exist in the work if one or more of the authors were the sole author or sole joint authors, the work shall be treated as if the other author or authors were the sole author or sole joint authors of the work.

Cf. Copyright, Designs and Patents Act 1988, s. 10 (U.K.); 1962, No. 33, s. 12 (3), (4), (6)

7. Meaning of “unknown authorship”—

(1) For the purposes of this Act, a work is of unknown authorship if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.

(2) For the purposes of this Act, the identity of an author shall be regarded as unknown if it is not possible for a person who wishes to ascertain the identity of the author to do so by reasonable inquiry; but if that identity is once known it shall not subsequently be regarded as unknown.

Cf. Copyright, Designs and Patents Act 1988, s. 9 (4), (5) (U.K.); 1962, No. 33, s. 11 (3), (4)

8. Meaning of “copyright owner”—

(1) Where copyright or any aspect of copyright is owned by more than one person jointly, references in this Act to the copyright owner, or to the owner of the copyright in the work, are to all owners.

(2) Where different persons are entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Act is the person who is entitled to the aspect of copyright relevant for that purpose.

(3) Subject to the provisions of Part VII of this Act, where a question arises under this Act whether an object of any description has been imported, sold, or otherwise dealt with other than pursuant to a copyright licence, the copyright owner shall be taken to be the person entitled to the copyright in respect of its application to the making of objects of that description in the country into which the object was imported or in which it was sold or otherwise dealt with.

Cf. Copyright, Designs and Patents Act 1988, s. 173 (U.K.); 1962, No. 33, s. 3 (10)

9. Meaning of “issue to the public”—

(1) References in this Act to the issue of copies of a work to the public mean the act of putting into circulation copies not previously put into circulation; and do not include the acts of—

- (a) Subsequent distribution or sale of those copies; or
- (b) Subject to subsections (2) and (3) of this section, subsequent hiring or loan of those copies; or
- (c) Subsequent importation of those copies into New Zealand.

(2) The issue of copies of a work to the public, in relation to computer programs, includes the rental of copies of computer programs to the public; but does not include any such rental where—

- (a) The computer program is incorporated into any other thing; and
- (b) The rental of the computer program is not the principal purpose or one of the principal purposes of the rental; and
- (c) The computer program cannot readily be copied by the hirer.

(3) The issue of copies of a work to the public, in relation to sound recordings and films, includes the rental of copies of those works to the public.

Cf. Copyright, Designs and Patents Act 1988, s. 18 (2) (U.K.)

10. Meaning of “publication”—

(1) In this Act, the term “publication”, in relation to a work,—

- (a) Means the issue of copies of the work to the public; and
- (b) Includes, in the case of a literary, dramatic, musical, or artistic work, making it available to the public by means of an electronic retrieval system;—

and “publish” has a corresponding meaning.

(2) 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.

(3) References in this Act to publication do not include publication that is not intended to satisfy the reasonable requirements of the public.

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

- (a) In the case of a literary, dramatic, or musical work,—
 - (i) The performance of the work; or
 - (ii) The broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system):
- (b) In the case of any artistic work,—
 - (i) The exhibition of the work; or
 - (ii) The issue to the public of copies of a film including the work; or
 - (iii) The broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system):
- (c) In the case of an artistic work being—
 - (i) A sculpture; or
 - (ii) A work of architecture in the form of a building or a model for a building; or
 - (iii) A work of artistic craftsmanship,—the issue to the public of copies of a graphic work representing, or of photographs of, the work:
- (d) In the case of a sound recording or film,—
 - (i) The playing or showing of the work in public; or
 - (ii) The broadcasting of the work or its inclusion in a cable programme service.
- (5) No account shall be taken for the purposes of this section of any unauthorised act.
Cf. Copyright, Designs and Patents Act 1988, s. 175 (1), (3)–(6) (U.K.); 1962, No. 33, s. 3 (1), (2), (5), (6)

11. Meaning of “commercial publication”—

In this Act, the term “commercial publication”, in relation to a literary, dramatic, musical, or artistic work, means the publication of the work consisting of—

- (a) Issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public; or
- (b) Making the work available to the public by means of an electronic retrieval system;—

and related expressions shall be construed accordingly.

Cf. Copyright, Designs and Patents Act 1988, s. 175 (2) (U.K.)

12. Meaning of “infringing copy”—

(1) In this Act, the term “infringing copy”, in relation to a copyright work, shall be construed in accordance with this section.

(2) An object is an infringing copy if its making constitutes an infringement of the copyright in the work in question.

(3) An object that a person imports, or proposes to import, into New Zealand is an infringing copy—

- (a) If, had that person made the object in New Zealand, that person would have infringed the copyright in the work in question; or
- (b) If the making of the object, by whomever it was made and wherever it was made, constituted an infringement of the copyright in the work in question.

(4) Where in any proceedings the question arises whether an object is an infringing copy, and it is shown—

- (a) That the object is a copy of the work in question; and
- (b) That copyright exists in the work or has existed at any time,—

it shall be presumed until the contrary is proved that the object was made at a time when copyright existed in the work.

(5) In this Act, an infringing copy includes a copy falling to be treated as an infringing copy under any of the following provisions of this Act:

- (a) Section 85 (4) (which relates to incidental recording for the purposes of a broadcast or cable programme);
- (b) Section 93 (1) (which relates to subsequent dealings with copies made under Part III of this Act).
- (6) In this Act, an infringing copy does not include a literary work or an artistic work that—
 - (a) Relates to a medicine that has been imported by the Crown pursuant to section 32A of the Medicines Act 1981; and
 - (b) Has been made, copied, published, adapted, or distributed, in an overseas country, by or with the licence of the owner of the copyright in the work in that country.

Cf. Copyright, Designs and Patents Act 1988, s. 27 (U.K.); 1962, No. 33, s. 10 (5); 1990, No. 71, s. 2

13. Act to bind the Crown—

This Act binds the Crown.

PART I

DESCRIPTION, OWNERSHIP, AND DURATION OF COPYRIGHT

Description of Copyright

14. Copyright in original works—

(1) Copyright is a property right that exists, in accordance with this Act, in original works of the following descriptions:

- (a) Literary, dramatic, musical, or artistic works:
- (b) Sound recordings:
- (c) Films:
- (d) Broadcasts:
- (e) Cable programmes:
- (f) Typographical arrangements of published editions.

(2) A work is not original if—

- (a) It is, or to the extent that it is, a copy of another work; or
- (b) It infringes the copyright in, or to the extent that it infringes the copyright in, another work.

(3) A cable programme is not an original work if its inclusion in a cable programme service is by way of reception and immediate retransmission of a broadcast.

Cf. Copyright, Designs and Patents Act 1988, ss. 1 (1), 5 (2), 6 (6), 7 (6), 8 (2) (U.K.); 1962, No. 33, ss. 7 (1), 13 (1), 14 (1), 15 (1), 17 (1)

15. Recording necessary for some works—

(1) Copyright does not exist in a literary or dramatic or musical work unless and until the work is recorded, in writing or otherwise.

(2) It is immaterial for the purposes of subsection (1) of this section whether the work is recorded by or with the consent of the author.

(3) Where a work is not recorded by the author, the question whether copyright exists in the record, as distinct from the work recorded, is not affected by anything in subsection (1) of this section.

Cf. Copyright, Designs and Patents Act 1988, s. 3 (2), (3) (U.K.)

16. Acts restricted by copyright—

(1) The owner of the copyright in a work has the exclusive right to do, in accordance with sections 30 to 34 of this Act, the following acts in New Zealand:

- (a) To copy the work:
 - (b) To issue copies of the work to the public, whether by sale or otherwise:
 - (c) To perform the work in public:
 - (d) To play the work in public:
 - (e) To show the work in public:
 - (f) To broadcast the work or include the work in a cable programme service:
 - (g) To make an adaptation of the work:
 - (h) To do any of the acts referred to in any of paragraphs (a) to (f) of this subsection in relation to an adaptation of the work:
 - (i) To authorise another person to do any of the acts referred to in any of paragraphs (a) to (h) of this subsection.
- (2) Subsection (1) of this section applies subject to Parts III and VIII of this Act.

Cf. Copyright, Designs and Patents Act 1988, s. 16 (1), (4) (U.K.); 1962, No. 33, ss. 6 (1), 7 (3), 7 (4), 13 (5), 14 (5), 17 (3)

Qualification for Copyright

17. Qualification for copyright—

(1) Copyright does not exist in a work unless the requirements of section 18 or section 19 or section 20 of this Act are satisfied in respect of that work.

(2) Subsection (1) of this section does not apply to copyright that exists by virtue of section 26 or section 28 of this Act.

(3) If the requirements of section 18 or section 19 or section 20 or section 26 or section 28 of this Act are once satisfied in respect of a work, copyright in that work does not cease to exist if any change occurs in any of the circumstances by reason of which those requirements were satisfied.

(4) For the avoidance of doubt, it is hereby declared that where any other provision of this Act imposes requirements, in addition to the requirements of section 18 or section 19 or section 20 of this Act, that must be satisfied for copyright to exist in a work, copyright does not exist in a work unless the requirements of that provision and the requirements of section 18 or section 19 or section 20 of this Act are satisfied in respect of that work.

Cf. Copyright, Designs and Patents Act 1988, s. 153 (U.K.)

18. Qualification by reference to author—

(1) A work qualifies for copyright if the author is, at the material time,—

- (a) A New Zealand citizen; or
- (b) An individual domiciled or resident in New Zealand; or
- (c) A body incorporated under the law of New Zealand.

(2) A work qualifies for copyright if the author is, at the material time,—

- (a) A citizen or subject of a prescribed foreign country; or
- (b) An individual domiciled or resident in a prescribed foreign country; or
- (c) A body incorporated under the law of a prescribed foreign country.

(3) Subject to subsection (4) of this section, a work of joint authorship qualifies for copyright if, at the material time, any of the authors satisfies the requirements of subsection (1) or subsection (2) of this section.

(4) Where a work of joint authorship qualifies for copyright under this section alone, only those authors who satisfy the requirements of subsection (1) or subsection (2) of this section shall be taken into account for the purposes of the application, to that work, of the following provisions of this Act:

- (a) Section 21 (which relates to the first ownership of copyright):
- (b) Subsections (1) and (4) of section 22 (which relate to the duration of copyright in literary, dramatic, musical, or artistic works):
- (c) Section 67 (which relates to acts permitted on assumptions as to expiry of copyright or death of the author in relation to anonymous or pseudonymous works).

Cf. Copyright, Designs and Patents Act 1988, s. 154 (U.K.); 1962, No. 33, ss. 7 (1), 12 (1), 13 (1), 14 (1), 15 (1), 17 (1)

19. Qualification by reference to country of first publication—

(1) A work (being a literary, dramatic, musical, or artistic work, a sound recording, a film, or a typographical arrangement of a published edition) qualifies for copyright if it is first published—

- (a) In New Zealand; or
- (b) In a prescribed foreign country.

(2) For the purposes of this section, publication in one country shall not be regarded as other than the first publication by reason of simultaneous publication elsewhere; and for this purpose publication elsewhere within the previous 30 days shall be treated as simultaneous.

Cf. Copyright, Designs and Patents Act 1988, s. 155 (U.K.); 1962, No. 33, ss. 7 (2), 13 (2), 14 (2), 17 (1)

20. Qualification by reference to place of transmission—

(1) A broadcast qualifies for copyright if it is made from—

- (a) A place in New Zealand; or
- (b) A place in a prescribed foreign country.

(2) A cable programme qualifies for copyright if it is sent from—

- (a) A place in New Zealand; or
- (b) A place in a prescribed foreign country.

Cf. Copyright, Designs and Patents Act 1988, s. 156 (U.K.)

Ownership of Copyright

21. First ownership of copyright—

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

(2) Where an employee makes, in the course of his or her employment, a literary, dramatic, musical, or artistic work, that person's employer is the first owner of any copyright in the work.

(3) Where—

- (a) A person commissions, and pays or agrees to pay for, the taking of a photograph or the making of a computer program, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film, or sound recording; and
- (b) The work is made in pursuance of that commission,— that person is the first owner of any copyright in the work.

(4) Subsections (2) and (3) of this section apply subject to any agreement to the contrary.

(5) Subsections (1) to (4) of this section apply subject to sections 26 and 28 of this Act.

Cf. Copyright, Designs and Patents Act 1988, s. 11 (U.K.); 1962, No. 33, ss. 9, 13 (4), 14 (4)

Duration of Copyright

22. Duration of copyright in literary, dramatic, musical, or artistic works—

(1) Subject to the following provisions of this section, copyright in a literary, dramatic, musical, or artistic work expires at the end of the period of 50 years from the end of the calendar year in which the author dies.

(2) If the work is computer-generated, copyright expires at the end of the period of 50 years from the end of the calendar year in which the work is made.

(3) If the work is of unknown authorship, copyright expires at the end of the period of 50 years from the end of the calendar year in which it is first made available to the public by an authorised act.

(4) For the purposes of subsection (3) of this section, the circumstances in which a work may be made available to the public include,—

(a) In the case of a literary, dramatic, or musical work,—

(i) Performance in public:

(ii) Being broadcast:

(iii) Inclusion in a cable programme service:

(b) In the case of an artistic work,—

(i) Exhibition in public:

(ii) The playing or showing in public of a film that includes the work:

(iii) Inclusion in a broadcast:

(iv) Inclusion in a cable programme service.

(5) If—

(a) A work is of unknown authorship; and

(b) Copyright in the work has expired pursuant to subsection (3) of this section; and

(c) The identity of the author becomes known after the copyright has expired,—

subsection (1) of this section does not apply to revive copyright in the work.

(6) In relation to a work of joint authorship,—

(a) The reference in subsection (1) of this section to the death of the author shall be construed,—

(i) If the identity of all the authors is known, as a reference to the last of them to die:

(ii) If the identity of one or more, but not all, of the authors is known, as a reference to the death of the last of the authors whose identity is known; and

(b) The reference in subsection (5) of this section to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known.

(7) This section does not apply to copyright in a work to which section 26 or section 28 of this Act applies.

Cf. Copyright, Designs and Patents Act 1988, s. 12 (U.K.); 1962, No. 33, s. 8 (1)

23. Duration of copyright in sound recordings and films—

(1) Copyright in a sound recording or film expires—

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

(b) If it is made available to the public by an authorised act before the end of that period, 50 years from the end of the calendar year in which it is so made available,—

whichever is the later.

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

(a) The work is first—

(i) Published; or

(ii) Broadcast; or

- (iii) Included in a cable programme service; or
- (b) In the case of a film or film sound track,—
 - (i) The work is first shown in public; or
 - (ii) The work is first played in public.

Cf. Copyright, Designs and Patents Act 1988, s. 13 (U.K.); 1962, No. 33, ss. 13 (3), 14 (3)

24. Duration of copyright in broadcasts and cable programmes—

(1) Copyright in a broadcast or a cable programme expires at the end of the period of 50 years from the end of the calendar year in which the broadcast is made or the cable programme is included in a cable programme service.

(2) Copyright in a repeated broadcast or repeated cable programme expires at the same time as copyright in the initial broadcast or initial cable programme expires; and accordingly no copyright arises in respect of a repeated broadcast or repeated cable programme that is broadcast or, as the case requires, included in a cable programme service after the expiry of the copyright in the initial broadcast or, as the case requires, the initial cable programme.

(3) A repeated broadcast means a broadcast that is a repeat of a broadcast previously made.

(4) A repeated cable programme means a cable programme previously included in a cable programme service.

Cf. Copyright, Designs and Patents Act 1988, s. 14 (U.K.); 1962, No. 33, s. 15 (2), (3)

25. Duration of copyright in typographical arrangement of published editions—

Copyright in a typographical arrangement of a published edition expires at the end of the period of 25 years from the end of the calendar year in which the edition is first published.

Cf. Copyright, Designs and Patents Act 1988, s. 15 (U.K.); 1962, No. 33, s. 17 (2)

Crown Copyright

26. Crown copyright—

(1) Where a work is made by a person employed or engaged by the Crown under a contract of service, a contract of apprenticeship, or a contract for services,—

- (a) The work qualifies for copyright notwithstanding section 17 (1) of this Act; and
- (b) The Crown is the first owner of any copyright in the work.

(2) Copyright in such a work is referred to in this Act as “Crown copyright”, notwithstanding that such copyright is assigned to another person.

(3) Crown copyright shall expire,—

- (a) In the case of a typographical arrangement of a published edition, at the end of the period of 25 years from the end of the calendar year in which the work is made;
- (b) In the case of any other work, at the end of the period of 100 years from the end of the calendar year in which the work is made.

(4) In the case of a work of joint authorship where one or more, but not all, of the authors are persons employed or engaged by the Crown under a contract of service, a contract of apprenticeship, or a contract for services, this section applies only in relation to those authors and the copyright existing by virtue of their contribution to the work.

(5) Subject to this section and to any other express provision of this Act, the provisions of this Act apply in relation to Crown copyright as to other copyright.

(6) Subsection (1) of this section applies subject to any agreement to the contrary.

(7) This section is subject to section 27 of this Act.

Cf. Copyright, Designs and Patents Act 1988, s. 163 (U.K.); 1962, No. 33, s. 52

27. No copyright in certain works—

- (1) No copyright exists in any of the following works, whenever those works were made:
 - (a) Any Bill introduced into the House of Representatives:
 - (b) Any Act as defined in section 4 of the Acts Interpretation Act 1924:
 - (c) Any regulations:
 - (d) Any bylaw as defined in section 2 of the Bylaws Act 1910:
 - (e) The New Zealand Parliamentary Debates:
 - (f) Reports of select committees laid before the House of Representatives:
 - (g) Judgments of any court or tribunal:
 - (h) Reports of Royal commissions, commissions of inquiry, ministerial inquiries, or statutory inquiries.
- (2) Subsection (1) of this section shall come into force on a date to be appointed by the Governor-General by Order in Council; and one or more Orders in Council may be made appointing different dates for different paragraphs of that subsection.

28. Copyright vesting in certain international organisations—

- (1) Where an original work (being a literary, dramatic, musical, or artistic work or a film) is made by an officer or employee of, or is published by, an international organisation to which this section applies,—
 - (a) The work qualifies for copyright notwithstanding section 17 (1) of this Act; and
 - (b) The organisation is the first owner of any copyright in the work.
 - (2) The copyright of an international organisation under this section shall expire,—
 - (a) In the case of a typographical arrangement of a published edition, at the end of the period of 25 years from the end of the calendar year in which the work is made or such longer period as may be specified for the purposes of this paragraph pursuant to subsection (5) of this section:
 - (b) In the case of any other work, at the end of the period of 50 years from the end of the calendar year in which the work is made or such longer period as may be specified for the purposes of this paragraph pursuant to subsection (5) of this section.
 - (3) Subject to this section and to any other express provision of this Act, the provisions of this Act apply in relation to the copyright of an international organisation under this section.
 - (4) An international organisation to which this section applies shall be deemed to have, and to have had at all material times, the legal capacities of a body corporate for the purposes of holding, dealing with, and enforcing copyright and in connection with all legal proceedings relating to copyright.
 - (5) The Governor-General may from time to time, by Order in Council,—
 - (a) Declare that any international organisation is an international organisation to which this section applies:
 - (b) For the purposes of complying with any international obligation of New Zealand, specify a period for the purposes of paragraph (a) or paragraph (b) of subsection (2) of this section.
- Cf. Copyright, Designs and Patents Act 1988, s. 168 (U.K.); 1962, No. 33, s. 50

PART II

INFRINGEMENT OF COPYRIGHT

Primary Infringement of Copyright

29. Infringement of copyright—

- (1) Copyright in a work is infringed by a person who, other than pursuant to a copyright licence, does any restricted act.
- (2) References in this Act to the doing of a restricted act are to the doing of that act—
 - (a) In relation to the work as a whole or any substantial part of it; and

- (b) Either directly or indirectly;—

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

- (3) This Part of this Act is subject to Parts III and VIII of this Act.

Cf. Copyright, Designs and Patents Act 1988, s. 16 (2), (3), (4) (U.K.); 1962, No. 33, s. 3 (1)

30. Infringement by copying—

The copying of a work is a restricted act in relation to every description of copyright work.

Cf. Copyright, Designs and Patents Act 1988, s. 17 (1) (U.K.)

31. Infringement by issue of copies to public—

The issue of copies of a work to the public is a restricted act in relation to every description of copyright work.

Cf. Copyright, Designs and Patents Act 1988, s. 18 (1) (U.K.)

32. Infringement by performance or playing or showing in public—

(1) The performance of a work in public is a restricted act only in relation to a literary, dramatic, or musical work.

(2) The playing or showing of a work in public is a restricted act only in relation to a sound recording, film, broadcast, or cable programme.

(3) Where copyright in a work is infringed by the performance, playing, or showing of the work in public by means of apparatus for receiving visual images or sounds conveyed by electronic or other means,—

- (a) The person by whom the visual images or sounds are sent; and

- (b) In the case of a performance, the performers—

shall not be regarded as responsible for the infringement.

(4) For the purposes of subsection (3) of this section, a person who sends visual images or sounds does not include a person who retransmits visual images or sounds.

Cf. Copyright, Designs and Patents Acts 1988, s. 19 (1), (3), (4) (U.K.)

33. Infringement by broadcasting or inclusion in cable programme service—

The broadcasting of a work or its inclusion in a cable programme service is a restricted act only in relation to—

- (a) A literary, dramatic, musical, or artistic work:

- (b) A sound recording or film:

- (c) A broadcast or cable programme.

Cf. Copyright, Designs and Patents Act 1988, s. 20 (U.K.)

34. Infringement by making adaptation or act done in relation to adaptation—

(1) The making of an adaptation of a work is a restricted act only in relation to a literary, dramatic, or musical work.

(2) For the purposes of subsection (1) of this section, an adaptation is made when it is recorded, in writing or otherwise.

(3) The doing of any of the acts specified in any of sections 30 to 33 of this Act or in subsection (1) of this section, in relation to an adaptation of a work, is also a restricted act in relation to the literary, dramatic, or musical work from which the adaptation was made.

(4) For the purposes of subsection (3) of this section, where the act done in relation to an adaptation of a work is an act specified in section 32 or section 33 of this Act, it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.

Cf. Copyright, Designs and Patents Act 1988, s. 21 (1), (2) (U.K.)

Secondary Infringement of Copyright

35. Importing infringing copy—

Copyright in a work is infringed by a person who, other than pursuant to a copyright licence, imports into New Zealand, otherwise than for that person's private and domestic use, an object that is, and that the person knows or has reason to believe is, an infringing copy of the work.

Cf. Copyright, Designs and Patents Act 1988, s. 22 (U.K.); 1962, No. 33, ss. 10 (2), 18 (2)

36. Possessing or dealing with infringing copy—

Copyright in a work is infringed by a person who, in New Zealand, other than pursuant to a copyright licence,—

- (a) Possesses in the course of a business; or
- (b) In the course of a business or otherwise, sells or lets for hire; or
- (c) In the course of a business, offers or exposes for sale or hire; or
- (d) In the course of a business, exhibits in public or distributes; or
- (e) Distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner—

an object that is, and that the person knows or has reason to believe is, an infringing copy of the work.

Cf. Copyright, Designs and Patents Act 1988, s. 23 (U.K.); 1962, No. 33, ss. 10 (3), (4), 18 (3), (4)

37. Providing means for making infringing copies—

- (1) Copyright in a work is infringed by a person who, other than pursuant to a copyright licence,—
 - (a) Makes; or
 - (b) Imports into New Zealand; or
 - (c) Possesses in the course of a business; or
 - (d) In the course of a business or otherwise, sells or lets for hire; or
 - (e) In the course of a business, offers or exposes for sale or hire—

an object specifically designed or adapted for making copies of that work, knowing or having reason to believe that the object is to be used to make such infringing copies.

(2) Copyright in a work is infringed by a person who, other than pursuant to a copyright licence, transmits the work by means of a telecommunications system (otherwise than by broadcasting or inclusion in a cable programme service), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in New Zealand or elsewhere.

Cf. Copyright, Designs and Patents Act 1988, s. 24 (U.K.)

38. Permitting use of premises for infringing performance—

(1) Where copyright in a literary, dramatic, or musical work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is also liable for the infringement unless, when the person gave that permission, he or she believed on reasonable grounds that the performance would not infringe copyright.

(2) In this section, the term “place of public entertainment” includes premises that are occupied mainly for purposes other than public entertainment but are from time to time made available for hire for the purposes of public entertainment.

Cf. Copyright, Designs and Patents Act 1988, s. 25 (U.K.)

39. Provision of apparatus for infringing performance, etc.—

(1) Where copyright in a work is infringed by a performance of the work in public, or by the playing or showing of the work in public, by means of apparatus for—

- (a) Playing sound recordings; or

- (b) Showing films; or
- (c) Receiving visual images or sounds conveyed by electronic means,—

the persons described in subsections (2) to (4) of this section are also liable for the infringement.

(2) A person who supplied the apparatus, or any substantial part of it, is liable for the infringement if, when he or she supplied the apparatus or part,—

- (a) He or she knew, or had reason to believe, that the apparatus was likely to be so used as to infringe copyright; or
- (b) In the case of apparatus whose normal use involves a performance, playing, or showing in public, he or she had no reasonable grounds for believing that the apparatus would not be so used as to infringe copyright.

(3) An occupier of premises who gave permission for the apparatus to be brought onto the premises is liable for the infringement if, when the occupier gave that permission, he or she knew, or had reason to believe, that the apparatus was likely to be so used as to infringe copyright.

(4) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement if, when the person supplied the copy, he or she knew, or had reason to believe, that the copy he or she supplied, or a copy made directly or indirectly from the copy, was likely to be so used as to infringe copyright.

Cf. Copyright, Designs and Patents Act 1988, s. 26 (U.K.)

PART III

ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

40. Provisions to be construed independently—

The provisions of this Part of this Act are to be construed independently of one another so that the fact that an act is not permitted by one provision does not mean that it is not permitted by another provision.

Cf. Copyright, Designs and Patents Act 1988, s. 28 (4) (U.K.)

41. Incidental copying of copyright work—

(1) Copyright in a work is not infringed by—

- (a) The incidental copying of the work in an artistic work, a sound recording, a film, a broadcast, or a cable programme; or
- (b) The issue to the public of copies of an artistic work, the playing of a sound recording, the showing of a film, the making of a broadcast, or the inclusion of a cable programme in a cable programme service, in which a copyright work has been incidentally copied; or
- (c) The issue to the public of copies of a sound recording, film, broadcast, or cable programme to which paragraph (a) or paragraph (b) of this subsection applies.

(2) For the purposes of subsection (1) of this section, a musical work, words spoken or sung with music, or so much of a sound recording, broadcast, or cable programme as includes a musical work or such words, shall not be regarded as incidentally copied in another work if the musical work or, as the case requires, such words or that sound recording, broadcast, or cable programme is deliberately copied.

Cf. Copyright, Designs and Patents Act 1988, s. 31 (U.K.); 1962, No. 33, s. 20 (3)

42. Criticism, review, and news reporting—

(1) Fair dealing with a work for the purposes of criticism or review, of that or another work or of a performance of a work, does not infringe copyright in the work if such fair dealing is accompanied by a sufficient acknowledgement.

(2) Fair dealing with a work for the purposes of reporting current events by means of a sound recording, film, broadcast, or cable programme does not infringe copyright in the work.

(3) Fair dealing with a work (other than a photograph) for the purposes of reporting current events by any means other than those referred to in subsection (2) of this section does not infringe copyright in the work if such fair dealing is accompanied by a sufficient acknowledgement.

Cf. Copyright, Designs and Patents Act 1988, s. 30 (U.K.); 1962, No. 33, ss. 19 (2), (3), 20 (2), (3)

43. Research or private study—

(1) Fair dealing with a work for the purposes of research or private study does not infringe copyright in the work.

(2) For the avoidance of doubt, it is hereby declared that fair dealing with a published edition for the purposes of research or private study does not infringe copyright in either the typographical arrangement of the edition or any literary, dramatic, musical, or artistic work or part of a work in the edition.

(3) In determining, for the purposes of subsection (1) of this section, whether copying, by means of a reprographic process or by any other means, constitutes fair dealing for the purposes of research or private study, a court shall have regard to—

- (a) The purpose of the copying; and
- (b) The nature of the work copied; and
- (c) Whether the work could have been obtained within a reasonable time at an ordinary commercial price; and
- (d) The effect of the copying on the potential market for, or value of, the work; and
- (e) Where part of a work is copied, the amount and substantiality of the part copied taken in relation to the whole work.

(4) Nothing in this section authorises the making of more than one copy of the same work, or the same part of a work, on any one occasion.

Cf. Copyright, Designs and Patents Act 1988, s. 29 (1), (2) (U.K.); Copyright Act 1968, s. 40 (1), (2) (Aust.); 1962, No. 33, ss. 19 (1), (5), 20 (1)

Education

44. Copying for educational purposes of literary, dramatic, musical, or artistic works or typographical arrangements—

(1) Copyright in a literary, dramatic, musical, or artistic work or the typographical arrangement of a published edition is not infringed by the copying of the whole or part of the work or edition if—

- (a) The copying is done by means of a reprographic process or by any other means; and
- (b) The copying is done—
 - (i) In the course of preparation for instruction; or
 - (ii) For use in the course of instruction; or
 - (iii) In the course of instruction; and

(c) The copying is done by or on behalf of the person who is to give, or who is giving, a lesson at an educational establishment; and

(d) No more than one copy of the whole or part of the work or edition is made on any one occasion.

(2) Copyright in a literary, dramatic, musical, or artistic work or the typographical arrangement of a published edition is not infringed by the copying of the whole or part of the work or edition if—

- (a) The copying is not done by means of a reprographic process; and
- (b) The copying is done—
 - (i) In the course of preparation for instruction; or
 - (ii) For use in the course of instruction; or
 - (iii) In the course of instruction; or
 - (iv) After the course of instruction; and

- (c) The copying is done by a person who is to give, is giving, or has given the lesson or by a person who is to receive, is receiving, or has received the lesson; and
- (d) One or more copies of the whole or part of the work or edition is or are made on any one occasion.
- (3) Copyright in a literary, dramatic, or musical work or the typographical arrangement of a published edition is not infringed by the copying of part of the work or edition if—
 - (a) The copying is done by means of a reprographic process or by any other means; and
 - (b) The copying is done for an educational purpose; and
 - (c) The copying is done by or on behalf of an educational establishment; and
 - (d) One or more copies of part of the work or edition is or are made on any one occasion; and
 - (e) No charge is made for the supply of a copy to any student or other person who is to receive, is receiving, or has received a lesson; and
 - (f) Subject to subsection (4) of this section, either,—
 - (i) In the period beginning with the commencement of this Act and ending with the close of the 31st day of December 1997, the copying is of no more than the greater of 5 percent of the work or edition or 5 pages of the work or edition; or
 - (ii) On and after the 1st day of January 1998, the copying is of no more than the greater of 3 percent of the work or edition or 3 pages of the work or edition.
- (4) If the effect of subparagraph (i) or subparagraph (ii) of subsection (3) (f) of this section would be that the whole of a work or edition is copied, those subparagraphs shall not apply and the copying that is permitted under subsection (3) of this section shall be of no more than 50 percent of the whole work or edition.
- (5) Copyright in an artistic work is not infringed by the copying, by means of a reprographic process or by any other means, of the whole or a part of that work if the artistic work is included within the part of any work or edition copied under subsection (3) of this section.
- (6) Where any part of a work or edition is copied under subsection (3) of this section by or on behalf of an educational establishment,—
 - (a) That part of that work or edition may not, within 14 days of that copying, be copied again under that subsection by or on behalf of that educational establishment; and
 - (b) No other part of that work or edition may, within 14 days of that copying, be copied under that subsection by or on behalf of that educational establishment.
- (7) In subsections (3) to (6) of this section,—

“Published edition” or “edition”, in relation to a collective work, means that part of the edition containing each work or part of a work:

“Work”, in relation to a collective work, means each of the works or parts of works in the collective work.

Cf. Copyright, Designs and Patents Act 1988, ss. 32 (1), 36 (1) (U.K.)

45. Copying for educational purposes of films and sound recordings—

- (1) Copyright in—
 - (a) Any work that is a sound recording, film, broadcast, or cable programme; or
 - (b) Any work included in a sound recording, film, broadcast, or cable programme—is not infringed by the copying of that work in the circumstances set out in subsection (2) of this section.
- (2) The circumstances referred to in subsection (1) of this section are—
 - (a) That the copying consists of or includes the making of a film or sound-track—
 - (i) In the course of preparation for instruction; or
 - (ii) For use in the course of instruction; or
 - (iii) In the course of instruction; or
 - (iv) After the course of instruction,—where the lesson is on how to make films or film sound-tracks; and

- (b) That the copying is done by or on behalf of a person who is to give, is giving, or has given the lesson or by or on behalf of a person who is to receive, is receiving, or has received the lesson; and
- (c) That no charge is made for the supply of a copy to any student or other person who is to receive, is receiving, or has received the lesson.
- (3) Copyright in—
 - (a) Any work that is a sound recording; or
 - (b) Any work included in a sound recording—

is not infringed by the copying of that work in the circumstances set out in subsection (4) of this section.

- (4) The circumstances referred to in subsection (3) of this section are—
 - (a) That the copying is done—
 - (i) In the course of preparation for instruction; or
 - (ii) For use in the course of instruction; or
 - (iii) In the course of instruction; or
 - (iv) After the course of instruction,—

where the lesson—

- (v) Relates to the learning of a language; or
 - (vi) Is conducted by correspondence; and
- (b) That the copying is done by or on behalf of a person who is to give, is giving, or has given the lesson or by or on behalf of a person who is to receive, is receiving, or has received the lesson; and
- (c) That no charge is made for the supply of a copy to any student or other person who is to receive, is receiving, or has received the lesson.

(5) Subsections (3) and (4) of this section do not apply if or to the extent that licences authorising the copying of a work in the circumstances set out in subsection (4) of this section are available under a licensing scheme and the person doing the copying knew that fact.

Cf. Copyright, Designs and Patents Act 1988, s. 32 (2) (U.K.)

46. Anthologies for educational use—

- (1) The copying of a short passage from a published work (being a literary, dramatic, or musical work) in a collection that—
 - (a) Is intended for use in educational establishments and is so described in its title, and in any advertisements issued by or on behalf of the publisher of that collection; and
 - (b) Consists mainly of material in which no copyright exists or in which copyright is owned by the publisher of that collection or the Crown—

does not infringe copyright in the work if—

- (c) The publisher of the work did not intend it to be used in such establishments; and
 - (d) The passage is accompanied by a sufficient acknowledgement.

(2) Subsection (1) of this section does not authorise the copying of more than 2 passages from copyright works by the same author in collections published by the same publisher over any period of 5 years.

(3) In relation to any given passage, the reference in subsection (2) of this section to passages from copyright works by the same author—

- (a) Shall be taken to include passages from collective works of which that author is one of the authors; and
 - (b) If the passage in question is from such a collective work, shall be taken to include passages from works by any of the authors, whether alone or in collaboration with another.

(4) References in this section to the use of a work in an educational establishment are to any use for the educational purposes of such an establishment.

- (5) Subsection (1) of this section does not apply to a literary work that is a computer program.

Cf. Copyright, Designs and Patents Act 1988, s. 33 (U.K.); 1962, No. 33, s. 19 (6)

47. Performing, playing, or showing work in course of activities of educational establishment—

(1) The performance of a literary, dramatic, or musical work before an audience consisting of persons who are students or staff members at an educational establishment or are directly connected with the activities of the establishment—

- (a) By a student or staff member in the course of the activities of the establishment; or
- (b) At the establishment, by any person for the purposes of instruction,—

is not a performance in public for the purposes of section 32 (1) of this Act.

(2) The playing or showing, for the purposes of instruction, of a sound recording, film, broadcast, or cable programme before such an audience at an educational establishment is not a playing or showing of the work in public for the purposes of section 32 (2) of this Act.

(3) For the purposes of this section, a person shall not be treated as a person directly connected with the activities of an educational establishment by reason only that the person is a parent or guardian of a student at that educational establishment.

Cf. Copyright, Designs and Patents Act 1988, s. 34 (U.K.); 1962, No. 33, s. 21 (5)

48. Recording by educational establishments of broadcasts and cable programmes—

(1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without infringing copyright in the broadcast or cable programme, or in any work included in it.

(2) This section does not apply if or to the extent that licences authorising the recording of a broadcast or cable programme by or on behalf of an educational establishment are available under a licensing scheme and the educational establishment knew that fact.

Cf. Copyright, Designs and Patents Act 1988, s. 35 (1), (2) (U.K.)

49. Things done for purposes of examination—

Copyright is not infringed by anything done for the purposes of an examination, whether by way of setting the questions, communicating the questions to the candidates, or answering the questions.

Cf. Copyright, Designs and Patents Act 1988, s. 32 (3) (U.K.); 1962, No. 33, s. 21 (4) (b)

Libraries and Archives

50. Interpretation—

(1) In sections 51 to 56 of this Act, unless the context otherwise requires,—
“Archive”—

- (a) Means—
 - (i) The National Archives; or
 - (ii) The National Library; or
 - (iii) The sound archive maintained by Radio New Zealand Limited; or
 - (iv) The film archive maintained by Television New Zealand Limited; or
 - (v) The film archive maintained by the New Zealand Film Archive Incorporated; or
 - (vi) Any collection of documents (within the meaning of section 2 of the Official Information Act 1982) of historical significance or public interest that is in the custody of and being maintained by a body, whether incorporated or unincorporated, that does not keep and maintain the collection for the purpose of deriving a profit; and
- (b) Includes, in relation only to its holding of public archives (within the meaning of section 2 of the Archives Act 1957), any other library, museum, or other body approved by the Minister of Internal Affairs to be a repository of archival material under section 19 of the Archives Act 1957:

“Prescribed library” means—

- (a) The National Library; or
- (b) The Parliamentary Library; or
- (c) Every law library provided and maintained pursuant to section 26 (2) of the Law Practitioners Act 1982; or
- (d) A library maintained by an educational establishment, government department, or local authority; or
- (e) A library of any other class of library prescribed by regulations made under this Act, not being a library conducted for profit.

(2) In sections 51 to 56 of this Act, every reference to the librarian of a prescribed library or the archivist of an archive shall be read as including a person acting on behalf of the librarian or archivist.

Cf. Copyright, Designs and Patents Act 1988, s. 37 (6) (U.K.)

51. Copying by librarians of parts of published works—

(1) The librarian of a prescribed library may, if the conditions contained in subsection (2) of this section are complied with, make from a published edition (other than a published edition that is an article in a periodical), for supply to any person, a copy of a reasonable proportion of any literary, dramatic, or musical work, and may include in the copy any artistic work that appears within the proportion copied, without infringing copyright in the literary, dramatic, musical, or artistic work or the typographical arrangement of the published edition.

(2) The conditions referred to in subsection (1) of this section are—

- (a) That no person is supplied on the same occasion with more than one copy of the same material; and
- (b) That, where any person to whom a copy is supplied is required to pay for the copy, the payment required is no higher than a sum consisting of the total of the cost of production of the copy and a reasonable contribution to the general expenses of the library.

(3) Where any person is supplied with, or otherwise comes into possession of, a copy made in accordance with this section, that person may use the copy only for the purposes of research or private study.

(4) This section does not apply to a literary work that is a computer program.

Cf. Copyright, Designs and Patents Act 1988, s. 39 (U.K.); 1962, No. 33, s. 21 (1)

52. Copying by librarians of articles in periodicals—

(1) The librarian of a prescribed library may, if the conditions contained in subsection (2) of this section are complied with, make for supply to any person a copy of—

- (a) A literary, dramatic, or musical work, and any artistic work included in that work, that is contained in an article in a periodical; or
- (b) A published edition that is an article in a periodical,—

without infringing copyright in the literary, dramatic, musical, or artistic work or the typographical arrangement of the published edition.

(2) The conditions referred to in subsection (1) of this section are—

- (a) That no person is supplied on the same occasion with more than one copy of the same article; and
- (b) That no person is supplied on the same occasion with copies of more than one article contained in the same issue of a periodical, unless the copies supplied all relate to the same subject-matter; and
- (c) That, where any person to whom a copy is supplied is required to pay for the copy, the payment required is no higher than a sum consisting of the total of the cost of production of the copy and a reasonable contribution to the general expenses of the library.

(3) Where any person is supplied with, or otherwise comes into possession of, a copy made in accordance with this section, that person may use the copy only for the purposes of research or private study.

Cf. Copyright, Designs and Patents Act 1988, s. 38 (U.K.); 1962, No. 33, s. 21 (1)

53. Copying by librarians for users of other libraries—

(1) The librarian of a prescribed library may, if the condition contained in subsection (2) of this section is complied with, make from a published edition, for supply to another prescribed library, a copy of,—

- (a) Subject to paragraph (b) of this subsection, a reasonable proportion of any literary, dramatic, or musical work (and the librarian may include in the copy any artistic work that appears within the proportion copied):
- (b) In relation to a literary, dramatic, or musical work that is contained in an article in a periodical,—
 - (i) The whole article and any artistic work included in that article; and
 - (ii) If there is any other article in the same issue of the periodical relating to the same subject-matter as the first article copied, the whole of that other article and any artistic work included in that article,—

without infringing copyright in the literary, dramatic, musical, or artistic work or the typographical arrangement of the published edition.

(2) The condition referred to in subsection (1) of this section is that a person has requested the library to which the copy is being supplied to supply him or her with the copy for the purposes of research or private study.

(3) Where any person is supplied with, or otherwise comes into possession of, a copy made in accordance with this section, that person may use the copy only for the purposes of research or private study.

(4) This section does not apply to a literary work that is a computer program.

54. Copying by librarians for collections of other libraries—

(1) The librarian of a prescribed library may, if the conditions contained in subsection (2) of this section are complied with, make a copy of a literary, dramatic, or musical work and any artistic work included in the work, where the copy is—

- (a) From a published edition that is a book; and
- (b) For supply to the librarian of another prescribed library,—

without infringing copyright in the literary, dramatic, musical, or artistic work or the typographical arrangement of the published edition.

(2) The conditions referred to in subsection (1) of this section are that the librarian to whom the copy of the work is supplied—

- (a) Has been unable to obtain the work at an ordinary commercial price within the 6 months preceding the supply; and
- (b) Makes and keeps a record sufficient to identify the work copied; and
- (c) Permits the inspection of the record by the copyright owner during normal office hours; and
- (d) Pays, on demand, equitable remuneration to the copyright owner for the work copied.

(3) In subsection (2) (d) of this section, the term “equitable remuneration” means a sum agreed by the librarian and the copyright owner or, in the absence of agreement, a sum determined by the Tribunal on an application under section 168 of this Act.

(4) This section does not apply to a literary work that is a computer program.

Cf. Copyright, Designs and Patents Act 1988, s. 41 (U.K.); 1962, No. 3, s. 21 (2)

55. Copying by librarians or archivists to replace copies of works—

(1) The librarian of a prescribed library or the archivist of an archive may make a copy of any item in the collection of the library or archive for the purposes of—

- (a) Preserving or replacing that item by placing the copy in the collection of the library or archive in addition to or in place of the item; or
- (b) Replacing in the collection of another prescribed library or archive an item that has been lost, destroyed, or damaged,—

without infringing copyright in any work included in the item.

(2) Subsection (1) of this section applies only where it is not reasonably practicable to purchase a copy of the item in question to fulfil the purpose.

Cf. Copyright, Designs and Patents Act 1988, s. 42 (U.K.)

56. Copying by librarians or archivists of certain unpublished works—

(1) The librarian of a prescribed library or the archivist of an archive may, if the conditions contained in subsection (3) of this section are complied with, copy for supply to any person a copy of an unpublished work in the library or archive, without infringing copyright in that work.

(2) This section does not apply if the copyright owner has prohibited copying of the work and at the time the copy is made the librarian or archivist making it is, or ought to be, aware of that fact.

(3) The conditions referred to in subsection (1) of this section are—

(a) That no person is supplied on the same occasion with more than one copy of the same work; and

(b) That, where any person to whom a copy is supplied is required to pay for the copy, the payment required is no higher than a sum consisting of the total of the cost of production of the copy and a reasonable contribution to the general expenses of the library or archive.

(4) Where any person is supplied with, or otherwise comes into possession of, a copy made in accordance with this section, that person may use the copy only for the purposes of research or private study.

(5) The provisions of this section do not apply to the sound archive maintained by Radio New Zealand Limited, the film archive maintained by Television New Zealand Limited, or the film archive maintained by the New Zealand Film Archive Incorporated.

Cf. Copyright, Designs and Patents Act 1988, s. 43 (U.K.); 1962, No. 33, s. 21 (3)

57. Playing or showing sound recordings or films—

(1) The sound archive maintained by Radio New Zealand Limited may play a sound recording held in the archive to an audience consisting of members of the public, without infringing copyright in the sound recording or in any work included in the sound recording, if the condition contained in subsection (3) of this section is complied with.

(2) The film archive maintained by Television New Zealand Limited or by the New Zealand Film Archive Incorporated may show a film, and play any sound recording associated with the film, held in the archive to an audience consisting of members of the public, without infringing copyright in the film or in any sound recording associated with the film or in any work included in the film or sound recording, if the condition contained in subsection (3) of this section is complied with.

(3) The condition referred to in subsections (1) and (2) of this section is that, where any person is required to pay to—

(a) Hear any sound recording played under subsection (1) of this section; or

(b) See any film shown, and hear any sound recording associated with the film played, under subsection (2) of this section,—

the payment required is no more than a reasonable contribution towards the maintenance of the archive in which the sound recording or film is held.

(4) This section does not apply if or to the extent that licences authorising the playing of a sound recording, or the showing of a film and the playing of a sound recording associated with the film, by an archive to which this section applies are available and if the archive knew that fact.

Public Administration

58. Copying by Parliamentary Library for members of Parliament—

(1) An officer of the Parliamentary Library may, if the conditions contained in subsection (3) of this section are complied with, supply to any member of Parliament a copy of a literary or dramatic work, and any artistic work included in that work, without infringing copyright in that literary, dramatic, or artistic work or the typographical arrangement of a published edition.

(2) An officer of the Parliamentary Library may, if the conditions contained in subsection (3) of this section are complied with, supply to any member of Parliament a recording of a broadcast or cable programme or a transcript of a recording of the broadcast or cable programme, without infringing copyright in the broadcast or cable programme or any work included in that broadcast or cable programme.

(3) The conditions referred to in subsections (1) and (2) of this section are—

- (a) That no member of Parliament is supplied on the same occasion with more than one copy or recording or transcript, as the case may be, of the same material; and
- (b) That the copy or recording or transcript is required by that member of Parliament for the purposes of performing his or her duties as such a member.

59. Parliamentary and judicial proceedings—

(1) Copyright is not infringed by anything done for the purposes parliamentary or judicial proceedings.

(2) Copyright is not infringed by anything done for the purposes of reporting parliamentary or judicial proceedings.

Cf. Copyright, Designs and Patents Act 1988, s. 45 (U.K.); 1962, No. 33, ss. 19 (4), 20 (7)

60. Royal commissions and statutory inquiries—

(1) Copyright is not infringed by anything done for the purposes of the proceedings of a Royal commission, commission of inquiry, ministerial inquiry, or statutory inquiry.

(2) Copyright is not infringed by anything done for the purposes of reporting any proceedings of a Royal commission, commission of inquiry, ministerial inquiry, or statutory inquiry that are held in public.

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

Cf. Copyright, Designs and Patents Act 1988, s. 46 (U.K.)

61. Material open to public inspection or on official register—

(1) Subject to any Order in Council made under subsection (4) of this section, where material is open to public inspection or public reference pursuant to a statutory requirement, or is on a statutory register, copyright in the material is not infringed by the copying of the material, by or with the authority of the appropriate person, for a purpose that does not involve the issuing of copies to the public.

(2) Subject to any Order in Council made under subsection (4) of this section, where material is open to public inspection or public reference pursuant to a statutory requirement, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.

(3) Subject to any Order in Council made under subsection (4) of this section, where material that is open to public inspection or public reference pursuant to a statutory requirement, or that is on a statutory register, contains information about matters of general scientific, technical, commercial, or economic interest, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of disseminating that information.

(4) The Governor-General may from time to time, by Order in Council, provide that all or any of subsections (1) to (3) of this section shall, in such cases as may be specified in the order, apply only to copies marked in such manner as may be so specified.

(5) The Governor-General may from time to time, by Order in Council, provide that all or any of subsections (1) to (3) of this section apply, to such extent and with such modifications as may be specified in the order, in relation to—

- (a) Material made open to public inspection or public reference by—
 - (i) An international organisation specified in the order; or
 - (ii) A person specified in the order who has functions in New Zealand under an international agreement to which New Zealand is a party; or
- (b) A register maintained by an international organisation specified in the order,—

as those provisions apply in relation to material open to public inspection or public reference pursuant to a statutory requirement or by virtue of being on a statutory register.

(6) In this section,—

“Appropriate person” means the person required to make the material open to public inspection or public reference or, as the case may be, the person maintaining the register:

“Statutory register” means a register maintained pursuant to a statutory requirement:

“Statutory requirement” means a requirement imposed by a provision of an enactment.

Cf. Copyright, Designs and Patents Act 1988, ss. 47, 49 (U.K.); 1962, No. 33, s. 61

62. Material communicated to the Crown in course of public business—

(1) This section applies where—

- (a) A literary, dramatic, musical, or artistic work has, in the course of public business, been communicated to the Crown for any purpose, by or with the licence of the copyright owner; and
- (b) A document (within the meaning of section 2 of the Official Information Act 1982) recording or embodying the work is owned by, or is in the custody or control of, the Crown.

(2) The Crown may, for—

- (a) The purpose for which the work was communicated to the Crown; or
- (b) Any related purpose that could reasonably have been anticipated by the copyright owner,—

copy the work, and issue copies of the work to the public, without infringing copyright in the work.

(3) The Crown may not copy a work, or issue copies of a work to the public, under this section if the work has previously been published otherwise than under this section.

(4) In subsection (1) of this section, the term “public business” includes any activity carried on by the Crown.

(5) This section has effect subject to any agreement to the contrary between the Crown and the copyright owner.

Cf. Copyright, Designs and Patents Act 1988, s. 48 (U.K.)

63. Use of copyright material for services of the Crown—

(1) Copyright in a work is not infringed by anything done in relation to the work, by or on behalf of the Crown or any person authorised in writing by a government department,—

- (a) For the purpose of national security or during a period of emergency; or
- (b) In the interests of the safety or health of the public or any members of the public.

(2) Where any act is done under subsection (1) of this section, the Crown shall be liable to pay, out of money appropriated by Parliament for the purpose, equitable remuneration to the copyright owner upon such terms as may be agreed upon between the Crown and the copyright owner or, in the absence of agreement, upon such terms as shall be determined by the Tribunal.

(3) No act to which subsection (1) of this section applies shall—

- (a) Constitute publication of a work; or
- (b) Affect the term of copyright in a work.

Cf. 1962, No. 33, s. 53 (1), (3), (4)

64. Rights of third parties in respect of Crown use—

(1) No provision of any assignment or licence in force between the copyright owner and a person other than a government department shall be effective to prevent any act being done in relation to a copyright work, where that act is done under section 63 of this Act.

(2) Where—

(a) An act is done under section 63 of this Act; and

(b) An exclusive licence is in force in respect of the work in relation to which the act is done,—
the Crown shall be liable to pay, out of money appropriated by Parliament for the purpose, equitable remuneration to the licensee upon such terms as may be agreed between the Crown and the licensee or, in the absence of agreement, upon such terms as shall be determined by the Tribunal.

(3) Where—

(a) A person has a right in relation to a work, by any licence other than an exclusive licence; and

(b) A payment is made, in respect of that work, under section 63 of this Act to the copyright owner or under subsection (2) of this section to the exclusive licensee,—

the person is entitled to recover from the owner or exclusive licensee, as the case may be, such part of any payment as may be agreed between that person and the copyright owner or the exclusive licensee, as the case may be, or, in the absence of agreement, as shall be determined by the Tribunal.

Cf. 1962, No. 33, s. 54

65. Proceedings against the Crown—

(1) Where any employee or agent of the Crown infringes copyright in a work, and the infringement is committed with the authority of the Crown, civil proceedings in respect of the infringement shall, subject to this Act, lie against the Crown under the Crown Proceedings Act 1950.

(2) Nothing in subsection (1) of this section shall affect the rights of the Crown, or any person authorised by a government department, under section 63 of this Act.

Cf. 1962, No. 33, s. 55 (1), (2)

66. Acts done under statutory authority—

(1) Where the doing of a particular act is specifically authorised by an enactment, the doing of that act does not infringe copyright, unless the enactment provides otherwise.

(2) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under or pursuant to any enactment.

Cf. Copyright, Designs and Patents Act 1988, s. 50 (U.K.)

Literary, Dramatic, Musical, or Artistic Works

67. Acts permitted on assumptions as to expiry of copyright or death of author in relation to anonymous or pseudonymous works—

(1) Copyright in a literary, dramatic, musical, or artistic work is not infringed by any act done at a time when, or in pursuance of arrangements made at a time when,—

(a) It is not possible for a person who wishes to do so to ascertain the identity of the author by reasonable inquiry; and

(b) It is reasonable to assume—

(i) That copyright has expired; or

(ii) That the author died 50 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1) (b) (ii) of this section does not apply in relation to—

(a) A work in which Crown copyright exists under section 26 of this Act; or

(b) A work—

(i) In which copyright originally vested in an international organisation under section 28 of this Act; and

(ii) In respect of which an order made under that section specifies a copyright period longer than 50 years.

(3) In relation to a work of joint authorship,—

(a) The reference in subsection (1) (a) of this section to its being possible to ascertain the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors; and

(b) The reference in subsection (1) (b) (ii) of this section to the author having died shall be construed as a reference to all the authors having died.

Cf. Copyright, Designs and Patents Act 1988, s. 57 (U.K.)

68. Use of recording of spoken words in certain cases—

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

(a) Reporting current events; or

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

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

(2) The conditions referred to in subsection (1) of this section are that—

(a) The recording is a direct record of the spoken words and is not taken from a previous recording or from a broadcast or cable programme; and

(b) The making of the recording was not prohibited by the speaker and, where copyright already existed in the work, did not infringe copyright; and

(c) The use made of the recording or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner before the recording was made; and

(d) The use is by or with the authority of a person who is lawfully in possession of the recording.

Cf. Copyright, Designs and Patents Act 1988, s. 58 (U.K.)

69. Provision of Braille copies of literary or dramatic works—

(1) A body prescribed by regulations made under this Act may, if the conditions contained in subsection (2) of this section are complied with, make copies or adaptations of published literary or dramatic works for the purpose of providing persons who have a print disability with copies that are in Braille or otherwise modified for their special needs, without infringing copyright in those literary or dramatic works.

(2) The conditions referred to in subsection (1) of this section are—

(a) That the prescribed body has made reasonable efforts to obtain a copy of the complete work, in Braille or otherwise modified as required by the person or persons to whom it is to be provided, within a reasonable time at an ordinary commercial price, but has been unable to do so; and

(b) That the copies are provided only to persons having a print disability; and

(c) That, where any body makes a copy or adaptation of a published literary or dramatic work under this section, the body shall, as soon as is reasonably practicable, take all reasonable steps to notify the owner of the copyright in the work of the making of the copy or adaptation; and

(d) That, where any person to whom a copy is provided is required to pay for the copy, the payment required is no higher than a sum consisting of the total cost of the production of the copy and a reasonable contribution to the general expenses of the prescribed body.

(3) A body shall not be prescribed for the purposes of subsection (1) of this section if it is established or conducted for profit.

(4) For the purposes of this section, a person has a print disability if he or she—

(a) Is blind; or

(b) Suffers severe impairment of his or her sight; or

(c) Is unable to hold or manipulate books; or

(d) Is unable to focus or move his or her eyes; or

- (e) Suffers a handicap with respect to visual perception.

70. Public reading or recitation—

(1) The reading in public or recitation in public by one person of a reasonable extract from a published literary or dramatic work shall not be treated as a performance in public for the purposes of section 32 (1) of this Act, if that reading or recitation is accompanied by a sufficient acknowledgement.

(2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme, of a reading or recitation that pursuant to subsection (1) of this section is not treated as a performance in public, if the recording, broadcast, or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection.

Cf. Copyright, Designs and Patents Act 1988, s. 59 (U.K.); 1962, No. 33, s. 19 (8)

71. Abstracts of scientific or technical articles—

Where an article on a scientific or technical subject is published in a periodical accompanied by an abstract indicating the contents of the article, it is not an infringement of copyright in the abstract, or in the article, to copy the abstract or issue copies of the abstract to the public.

Cf. Copyright, Designs and Patents Act 1988, s. 60 (1) (U.K.)

72. Recordings of folk-songs—

(1) A sound recording of a performance of a song may be made for the purpose of including the song in an archive maintained by a body prescribed by regulations made under this Act, without infringing copyright in the words as a literary work or in the accompanying musical work, if the conditions in subsection (2) of this section are complied with.

(2) The conditions referred to in subsection (1) of this section are that—

- (a) The words are unpublished and of unknown authorship at the time the recording is made; and
- (b) The making of the recording does not infringe any other copyright; and
- (c) The making of the recording is not prohibited by any performer.

(3) Copies of a sound recording made in reliance on subsection (1) of this section and included in an archive maintained by a body prescribed by regulations made under this Act may, if the condition contained in subsection (4) of this section is complied with, be made and supplied by the archivist without infringing copyright in the recording or the works included in it.

(4) The condition referred to in subsection (3) of this section is that no person is furnished with more than one copy of the same recording.

Cf. Copyright, Designs and Patents Act 1988, s. 61 (U.K.)

73. Representation of certain artistic works on public display—

(1) This section applies to the following works:

- (a) Buildings;
- (b) Works (being sculptures, models for buildings, or works of artistic craftsmanship) that are permanently situated in a public place or in premises open to the public.

(2) Copyright in a work to which this section applies is not infringed by—

- (a) Copying the work by making a graphic work representing it; or
- (b) Copying the work by making a photograph or film of it; or
- (c) Broadcasting, or including in a cable programme, a visual image of the work.

(3) Copyright is not infringed by the issue to the public of copies, or the broadcasting or inclusion in a cable programme, of anything whose making was, under this section, not an infringement of copyright.

Cf. Copyright, Designs and Patents Act 1988, s. 62 (U.K.)

74. Special exception from protection of literary or artistic works—

(1) The making of any object in 3 dimensions (including, subject to subsection (2) of this section, a copy in 2 dimensions reasonably required for the making of the object) does not infringe copyright in a literary or artistic work, if the work or a copy of it forms part of—

(a) A patent specification that—

(i) Is open to public inspection in the New Zealand Patent Office in respect of a New Zealand patent that, for any reason, has ceased to have effect; and

(ii) Is used for the purpose of making the object; or

(b) A representation or specimen of a design that—

(i) Is open to public inspection in the New Zealand Patent Office in respect of a design for which registered protection in New Zealand has ceased; and

(ii) Is used for the purpose of making the object.

(2) Subsection (1) of this section does not authorise—

(a) The making of a copy in 2 dimensions of an artistic work—

(i) To which subsection (1) of this section applies; and

(ii) That is in 2 dimensions,—

where the copy is made directly from that artistic work; or

(b) The making of a copy of a literary work to which subsection (1) of this section applies, where the copy is made directly from that literary work.

(3) Where a patent that has ceased to have effect is restored by an order made under section 35 of the Patents Act 1953, nothing done pursuant to subsection (1) of this section in the period beginning with the day on which the patent ceased to have effect and ending with the close of the day on which the order is made shall constitute an infringement of copyright in any literary or artistic work or copy of the work forming part of the patent specification.

Cf. 1962, No. 33, s. 20A; 1985, No. 134, s. 4

75. Special exception from protection of artistic work that has been applied industrially—

(1) The making of—

(a) Any object in 3 dimensions; or

(b) Subject to subsection (3) of this section, a copy in 2 dimensions reasonably required for the making of the object—

does not infringe copyright in an artistic work if, when the object or copy is made, the artistic work has been applied industrially, in New Zealand or in any other country, by or with the licence of the copyright owner,—

(c) In the case of a work of artistic craftsmanship, more than 25 years before the object or copy is made:

(d) In the case of a sculpture that is a cast or pattern for an object that has a primarily utilitarian function, more than 16 years before the object or copy is made:

(e) Subject to subsection (2) of this section, in the case of any other artistic work, more than 16 years before the object or copy is made.

(2) Subsection (1) of this section does not apply to—

(a) A sculpture that is not a cast or pattern for an object that has a primarily utilitarian function; or

(b) A work of architecture, being a building or a model for a building.

(3) Subsection (1) of this section does not authorise the making of a copy in 2 dimensions of an artistic work that is in 2 dimensions, where the copy is made directly from that artistic work.

(4) For the purposes of subsection (1) of this section, an artistic work is applied industrially if—

(a) More than 50 copies in 3 dimensions are made of the work, for the purposes of sale or hire; or

(b) The work is copied in 3 dimensions in one or more objects manufactured in lengths, for the purposes of sale or hire; or

(c) The work is copied as a plate that has been used to produce—

(i) More than 50 copies of an object in 3 dimensions for the purpose of sale or hire; or

(ii) One or more objects in 3 dimensions manufactured in lengths for the purposes of sale or hire.

(5) For the purposes of subsection (4) of this section, 2 or more copies in 3 dimensions that are of the same general character and intended for use together are a single copy.

Cf. 1962, No. 33, s. 20B; 1985, No. 134, s. 5

76. Special exception from protection of literary and artistic works relating to medicines—

The copying or adaptation or publication of a literary work or an artistic work does not infringe copyright in that work if that work—

- (a) Relates to a medicine that has been imported by the Crown pursuant to section 32A of the Medicines Act 1981; and
- (b) Has been made, copied, published, adapted, or distributed, in an overseas country, by or with the licence of the owner of the copyright in the work in that country.

Cf. 1962, No. 33, s. 20C; 1990, No. 71, s. 5

77. Making of subsequent works by same artist—

Where the author of an artistic work is not the copyright owner, he or she does not infringe copyright in that work by copying the work in making another artistic work, if the main design of the earlier work is not repeated or imitated.

Cf. Copyright, Designs and Patents Act 1988, s. 64 (U.K.); 1962, No. 33, s. 20 (9)

78. Reconstruction of buildings—

Anything done for the purposes of reconstructing a building does not infringe copyright—

- (a) In the building; or
- (b) In any drawings or plans in accordance with which the building was, by or with the licence of the copyright owner, constructed.

Cf. Copyright, Designs and Patents Act 1988, s. 65 (U.K.); 1962, No. 33, s. 20 (10)

Computer Programs, Sound Recordings, and Films

79. Rental by educational establishments and libraries—

Copyright in a work (being a computer program, sound recording, or film) is not infringed by the rental of that work to any person by an educational establishment or a prescribed library within the meaning of section 50 of this Act, where—

- (a) The educational establishment or prescribed library does not effect the rental of the work for the purposes of making a profit; and
- (b) The work that is the subject of the rental has previously been put into circulation with the licence of the copyright owner.

80. Back-up copy of computer program—

(1) Subject to subsection (3) of this section, copyright in a computer program is not infringed by the making of a copy of the computer program if—

- (a) The copy is made by or on behalf of the lawful user of the copy of the program (in this section referred to as the “original copy”) from which the first-mentioned copy is made; and
- (b) The copy is made solely for the purpose of being used by or on behalf of the lawful user of the original copy—

(i) Instead of the original copy in order to preserve the original copy for use if the copy is lost, destroyed, or rendered unusable; or

(ii) If the original copy is lost, destroyed, or rendered unusable.

(2) If the original copy is lost, destroyed, or rendered unusable, the copy made pursuant to subsection (1) of this section shall be deemed for the purposes of this section to be the original copy.

- (3) Subsection (1) of this section does not apply to the making of a copy of a computer program—
 - (a) From an infringing copy of the computer program; or
 - (b) Contrary to an express direction by or on behalf of the owner of the copyright in the computer program given to the lawful user of the original copy not later than the time when the lawful user of the original copy acquired that original copy.
- (4) For the purposes of this section,—
 - (a) A reference to a computer program includes a reference to an adaptation of that program; and
 - (b) A reference to a copy of a computer program is a reference to any object in which the program is reproduced in a material form; and
 - (c) A reference to an express direction, in relation to a copy of a computer program, includes a reference to a clearly legible direction printed on the copy or on a package in which the copy is supplied.

Cf. Copyright Act 1968, s. 43A (Aust.)

81. Playing of sound recordings for purposes of club, society, etc.—

(1) It is not an infringement of copyright in a sound recording to play the sound recording as part of the activities of, or for the benefit of, a club, society, or other organisation, if the conditions contained in subsection (2) of this section are complied with.

- (2) The conditions referred to in subsection (1) of this section are—
 - (a) That the club, society, or organisation is not established or conducted for profit; and
 - (b) That the main objects of the club, society, or organisation are charitable or are otherwise concerned with the advancement of religion, education, or social welfare; and
 - (c) That the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the club, society, or organisation.

Cf. Copyright, Designs and Patents Act 1988, s. 67 (U.K.); 1962, No. 33, s. 13 (6)

Broadcasts and Cable Programmes

82. Recording for purposes of maintaining standards in broadcasts and cable programmes—

The making of a recording of a broadcast or cable programme does not infringe copyright in the broadcast or cable programme, or in any work included in the broadcast or cable programme, if the recording is made by the author of the broadcast or cable programme solely for the purpose of checking on the maintenance of standards in programmes broadcast by the author or, as the case may be, cable programmes transmitted by the author.

83. Recording for purposes of complaining—

(1) The making of a recording of a broadcast or cable programme solely for the purpose of enabling the person who made the recording to prepare and despatch a complaint, including the recording, to any person or body having responsibility for dealing with complaints about the content of broadcasts or cable programmes or advertising contained in broadcasts or cable programmes does not infringe copyright in the broadcast or cable programme or in any work included in the broadcast or cable programme.

- (2) A recording that is—
 - (a) Made under subsection (1) of this section; and
 - (b) Retained for any longer than is reasonably necessary to enable the person who made the recording to prepare and despatch the complaint—

infringes copyright in the broadcast or cable programme recorded and in any work included in the recording, and shall be treated as an infringing copy.

84. Recording for purposes of time shifting—

(1) The making for private and domestic use of a recording of a broadcast or cable programme solely for the purpose of enabling the recording to be viewed or listened to at a more convenient time does

not infringe copyright in the broadcast or cable programme or in any work included in the broadcast or cable programme.

- (2) A recording that is—
 - (a) Made under subsection (1) of this section; and
 - (b) Retained for any longer than is necessary—
 - (i) To enable the recording to be viewed or listened to at a more convenient time; and
 - (ii) If the person who viewed or listened to the recording wishes to make a complaint, to enable that person to prepare and despatch a complaint, including the recording, to any person or body having responsibility for dealing with complaints about the content of broadcasts or cable programmes or advertising contained in broadcasts or cable programmes—

infringes copyright in the broadcast or cable programme recorded and in any work included in the recording, and shall be treated as an infringing copy.

Cf. Copyright, Designs and Patents Act 1988, s. 70 (U.K.); 1962, No. 33, s. 15 (4) (a), (b)

85. Incidental recording for purposes of broadcast or cable programme—

(1) This section applies where, under an assignment or licence, a person is authorised to broadcast or include in a cable programme service—

- (a) A literary, dramatic, or musical work, or an adaptation of such a work; or
- (b) An artistic work; or
- (c) A sound recording or film.

(2) Where this section applies, the person so authorised may, without the consent of the copyright owner but only if the conditions contained in subsection (3) of this section are complied with, do or authorise the doing of any of the following acts for the purposes of the broadcast or cable programme:

- (a) In the case of a literary, dramatic, or musical work, or an adaptation of such a work, copy the work or adaptation by making a sound recording or film of the work or adaptation:
 - (b) In the case of an artistic work, copy the work by taking a photograph or making a film of the work:
 - (c) In the case of a sound recording or a film, make a copy of the recording or film.
- (3) The conditions referred to in subsection (2) of this section are—
- (a) That the recording, film, photograph, or copy is not used for any other purpose; and
 - (b) That the recording, film, photograph, or copy is destroyed within 6 months of being first used for broadcasting the work or, as the case may be, including the work in a cable programme, unless the Minister has authorised the preservation of any recording, film, photograph, or copy in the records of a government department or in the National Archives because of its documentary character or exceptional importance.

(4) A recording, film, photograph, or copy made in accordance with this section shall be treated as an infringing copy—

- (a) For the purposes of any use in breach of the condition contained in subsection (3) (a) of this section; and
- (b) For all purposes after either of the conditions contained in subsection (3) of this section is broken.

Cf. Copyright, Designs and Patents Act 1988, s. 68 (U.K.); 1962, No. 33, s. 19 (9), (10)

86. Photographs of television broadcasts or cable programme—

Copyright in—

- (a) A television broadcast or cable programme; or
- (b) Any film included in that broadcast or programme—

is not infringed by the copying for private and domestic use of the whole or any part of an image forming part of the television broadcast or cable programme by—

- (c) The taking of a photograph of the image; or

- (d) The making of a copy of such a photograph.

Cf. Copyright, Designs and Patents Act 1988, s. 71 (U.K.); 1962, No. 33, s. 15 (4) (a)

87. Free public playing or showing of broadcast or cable programme—

(1) The playing in public or showing in public of a broadcast (other than a broadcast to which subsections (4) to (7) of this section apply) or cable programme to an audience who have not paid for admission to the place where the broadcast or cable programme is to be heard or seen does not infringe any copyright in—

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

(2) For the purposes of subsection (1) of this section, the audience shall be treated as having paid for admission to a place—

- (a) If they have paid for admission to a place of which that place forms part; or
(b) If goods or services are supplied at that place, or a place of which that place forms part,—
(i) At prices that are substantially attributable to the facilities afforded for hearing or seeing the broadcast or cable programme; or
(ii) At prices exceeding those usually charged there and that are partly attributable to those facilities; or
(c) If the place is a hotel, motel, camping ground, or any other place that admits persons for a fee for the purposes of obtaining accommodation of a temporary nature and they are persons residing at the hotel, motel, camping ground, or other place.

(3) For the purposes of subsection (1) of this section, the following persons shall not be treated as having paid for admission to a place:

- (a) Persons admitted as residents or inmates of a place (other than a hotel, motel, camping ground, or other place to which subsection (2) (c) of this section applies);
(b) Persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing broadcasts or cable programmes is only incidental to the main purposes of the club or society.

(4) Subsections (5) to (7) of this section apply in respect of the playing or showing of a broadcast—

- (a) That is made for reception in the area in which it is played or shown; and
(b) That is not a satellite transmission or an encrypted transmission; and
(c) That is shown or played simultaneously upon reception of the transmission of the broadcast.

(5) The playing in public or showing in public of a broadcast to which subsection (4) of this section applies to an audience who have not paid for admission to the place where the broadcast is to be heard or seen does not infringe any copyright in—

- (a) The broadcast; or
(b) Any sound recording or film included in the broadcast.

(6) For the purposes of subsection (5) of this section, the audience shall be treated as having paid for admission to a place—

- (a) If they have paid for admission to a place of which that place forms part; or
(b) If goods or services are supplied at that place, or a place of which that place forms part,—
(i) At prices that are substantially attributable to the facilities afforded for hearing or seeing the broadcast; or
(ii) At prices exceeding those usually charged there and that are partly attributable to those facilities.

(7) For the purposes of subsection (5) of this section, the following persons shall not be treated as having paid for admission to a place:

- (a) Persons admitted as residents or inmates of a place (including, without limitation, persons residing in a hotel, motel, camping ground, or any other place that admits persons for a fee for the purposes of obtaining accommodation of a temporary nature):
- (b) Persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing broadcasts or cable programmes is only incidental to the main purposes of the club or society.
- (8) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the copyright in a sound recording or film, the fact that the broadcast or programme was heard or seen in public by the reception of the broadcast or cable programme shall be taken into account in assessing the damages for that infringement.

Cf. Copyright, Designs and Patents Act 1988, s. 72 (U.K.)

88. Reception and retransmission of broadcast in cable programme service—

- (1) This section applies where a broadcast made from a place in New Zealand is, by reception and immediate retransmission, included in a cable programme service.
- (2) Where this section applies,—
 - (a) Copyright in the broadcast is not infringed if and to the extent that the broadcast—
 - (i) Is made for reception in the area in which the cable programme service is provided; and
 - (ii) Is not a satellite transmission or an encrypted transmission:
 - (b) Copyright in any work included in the broadcast is not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided:
 - (c) Where the making of the broadcast was an infringement of the copyright in any work included in the broadcast, the fact that the broadcast was retransmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.
- (3) This section does not apply if or to the extent that licences authorising the reception and immediate retransmission of a broadcast and any work included in the broadcast are available to the person providing the cable programme service under a licensing scheme and the person providing the cable programme service knew that fact.

Cf. Copyright, Designs and Patents Act 1988, s. 73 (U.K.); 1962, No. 33, s. 60

89. Provision of subtitled copies of broadcast or cable programme—

- (1) A body prescribed by regulations made under this Act may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in any other way, with copies that are subtitled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue copies to the public, without infringing any copyright in the broadcasts or programmes or works included in those broadcasts or programmes.

- (2) A body shall not be prescribed for the purposes of subsection (1) of this section if it is established or conducted for profit.

Cf. Copyright, Designs and Patents Act 1988, s. 74 (U.K.)

90. Recording for archival purposes—

- (1) A recording of a broadcast or cable programme of a class prescribed by regulations made under this Act, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a body prescribed by regulations made under this Act, without infringing copyright in the broadcast or programme or in any work included in the broadcast or programme.

- (2) A body shall not be prescribed for the purposes of subsection (1) of this section if it is established or conducted for profit.

Cf. Copyright, Designs and Patents Act 1988, s. 75 (U.K.)

91. Recording by media monitors—

- (1) A person who—

- (a) Makes a recording of a broadcast or cable programme, being a broadcast or cable programme that consists wholly or substantially of news or reports or discussions of current events; or
- (b) Makes a transcript of such a recording—

does not infringe copyright in the broadcast or cable programme or in any work included in the broadcast or cable programme, if the conditions contained in subsection (2) of this section are complied with.

- (2) The conditions referred to in subsection (1) of this section are—

- (a) That the recording—
 - (i) Is played solely to enable the making of a transcript of it; and
 - (ii) Is destroyed as soon as is reasonably practicable after the transcript is made and not later than one month after the recording is made; and
- (b) That the transcript of the recording is made only—
 - (i) By or on behalf of the person who made the recording; and
 - (ii) For the use of that person or in response to a request from another person for a transcript of the recording; and
- (c) That copies of the transcript are made only—
 - (i) By or on behalf of the person who made the recording; and
 - (ii) For the use of that person or in response to a request from another person for a copy of a transcript of the recording; and
- (d) That the person who made the recording pays equitable remuneration to the copyright owner.

(3) In subsection (2) (d) of this section, the term “equitable remuneration” means a sum agreed by the person who makes the recording and the copyright owner or, in the absence of agreement, a sum determined by the Tribunal on an application under section 168 of this Act.

(4) This section does not apply if or to the extent that licences authorising the recording of broadcasts or cable programmes and the making of transcripts of the recordings are available under a licensing scheme and the person making the recording knew that fact.

Adaptations

92. Adaptations—

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

Cf. Copyright, Designs and Patents Act 1988, s. 76 (U.K.)

Subsequent Dealings

93. Subsequent dealings with copies made under this Part—

- (1) Where a copy that would otherwise be an infringing copy—
 - (a) Is either—
 - (i) Made in accordance with any of the provisions of this Act referred to in subsection (2) of this section; or
 - (ii) Made in accordance with any of the provisions of this Act referred to in subsection (2) of this section and, where the provision in accordance with which the copy is made allows the copy to be dealt with, is dealt with; and
 - (b) Is subsequently dealt with,—

it shall be treated as an infringing copy—

- (c) For the purposes of the dealing referred to in paragraph (b) of this subsection, unless that dealing is an authorised dealing; and

- (d) For the purposes of any dealing that is subsequent to the dealing referred to in paragraph (b) of this subsection, unless the first-mentioned dealing is an authorised dealing.
 - (2) The provisions referred to in subsection (1) of this section are as follows:
 - (a) Section 44 (which relates to copying for educational purposes of literary, dramatic, musical, or artistic works or typographical arrangements):
 - (b) Section 45 (which relates to copying for educational purposes of films and sound recordings):
 - (c) Section 48 (which relates to recording by educational establishments of broadcasts and cable programmes):
 - (d) Section 49 (which relates to things done for the purposes of an examination):
 - (e) Section 51 (which relates to copying by librarians of parts of published works):
 - (f) Section 52 (which relates to copying by librarians of articles in periodicals):
 - (g) Section 53 (which relates to copying by librarians for users of other libraries):
 - (h) Section 55 (which relates to copying by librarians or archivists to replace copies of works):
 - (i) Section 56 (which relates to copying by librarians or archivists of certain unpublished works):
 - (j) Section 58 (which relates to copying by the Parliamentary Library for members of Parliament):
 - (k) Section 69 (which relates to the provision of Braille copies of literary or dramatic works):
 - (l) Section 83 (which relates to recording for the purposes of complaining):
 - (m) Section 84 (which relates to recording for the purposes of time shifting):
 - (n) Section 90 (which relates to recording for archival purposes).
 - (3) In subsection (1) of this section, the term “dealt with” means—
 - (a) Sold or let for hire in the course of a business or otherwise; or
 - (b) Offered or exposed for sale or hire in the course of a business.
- Cf. Copyright, Designs and Patents Act 1988, ss. 32 (5), 35 (3), 36 (5) (U.K.)

PART IV MORAL RIGHTS

Right to be Identified as Author or Director

94. Right to be identified as author or director—

- (1) Subject to section 97 of this Act,—
 - (a) The author of a literary, dramatic, musical, or artistic work that is a copyright work has the right to be identified as the author of the work; and
 - (b) The director of a film that is a copyright work has the right to be identified as the director of the work,—

in the circumstances described in this section, but the right is not infringed unless it has been asserted in accordance with section 96 of this Act

- (2) The author of a literary work (other than words intended to be sung or spoken with music) or a dramatic work has the right to be identified as the author of the work whenever—
 - (a) The work is published commercially, performed in public, broadcast, or included in a cable programme; or
 - (b) Copies of a film or sound recording including the work are issued to the public.
- (3) The author of—
 - (a) A literary work (other than words intended to be sung or spoken with music); or
 - (b) A dramatic work—

from which an adaptation is made has the right to be identified as the author of the work from which the adaptation is made whenever any of the events described in subsection (2) of this section occurs in relation to the adaptation of the work.

(4) The author of a musical work, or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified as the author of the work whenever—

- (a) The work is published commercially; or
- (b) Copies of a sound recording of the work are issued to the public; or
- (c) A film whose sound-track includes the work is shown in public; or
- (d) Copies of such a film are issued to the public.

(5) The author of—

- (a) A musical work; or
- (b) A literary work consisting of words intended to be sung or spoken with music—

from which an adaptation is made has the right to be identified as the author of the work from which the adaptation is made whenever any of the events described in subsection (4) of this section occurs in relation to the adaptation of the work.

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

- (a) The work is published commercially or exhibited in public; or
- (b) A visual image of the work is broadcast or included in a cable programme; or
- (c) A film including a visual image of the work is shown in public; or
- (d) Copies of such a film are issued to the public; or
- (e) In the case of a sculpture, a work of architecture in the form of a building or a model for a building, or a work of artistic craftsmanship, copies of a graphic work representing the work, or of a photograph of the work, are issued to the public.

(7) The author of a work of architecture in the form of a building has the right to be identified as such on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed.

(8) The director of a film has the right to be identified as the director of the film whenever—

- (a) The film is shown in public, broadcast, or included in a cable programme; or
- (b) Copies of the film are issued to the public.

Cf. Copyright, Designs and Patents Act 1988, s. 77 (1)–(6), (9) (U.K.)

95. Content of right to be identified—

(1) The right conferred by section 94 of this Act on an author or director is as follows:

(a) In the case of commercial publication, or the issue to the public of copies of a film or sound recording, to be identified clearly and reasonably prominently—

(i) In or on each copy published commercially or issued, as the case may be; or

(ii) If identification in or on each copy is not appropriate, in some other manner likely to bring his or her identity to the attention of a person acquiring a copy:

(b) In the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building:

(c) In any other case, to be identified clearly and reasonably prominently in a manner likely to bring his or her identity to the attention of a person seeing or hearing the performance, exhibition, showing, broadcast, cable programme, graphic work, or photograph.

(2) For the purposes of subsection (1) of this section, if the author or director, in asserting his or her right to be identified, specifies a pseudonym, initials, or some other particular form of identification, that form shall be used, but, in any other case, any reasonable form of identification may be used.

Cf. Copyright, Designs and Patents Act 1988, s. 77 (7), (8) (U.K.)

96. Right must be asserted—

(1) A person does not infringe the right conferred by section 94 of this Act by failing, in the circumstances described in that section, to identify the author as the author of the work or to identify the

director as the director of the work, as the case may be, unless the right has been asserted under this section in such a way as to require that person to so identify the author or director.

- (2) The right may be asserted generally, or in relation to any specified circumstances,—
 - (a) On an assignment of copyright in the work, by including in the instrument effecting the assignment a statement that the author or director asserts in relation to that work his or her right to be identified as the author or director, as the case may be; or
 - (b) At any time, by instrument in writing signed by the author or director.
- (3) The right may be asserted in relation to the public exhibition of an artistic work—
 - (a) By ensuring that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or her or under his or her direction or control, the author is identified as the author on the original or copy, or on a frame, mount, or other thing to which it is attached; or
 - (b) By including in any licence by which the author or other first owner of copyright authorises the making of copies of the work a statement signed by or on behalf of the author or other first owner of the copyright that the author asserts his or her right to be identified as the author in the event of the public exhibition of a copy made in pursuance of the licence.
- (4) The persons bound by an assertion of the right under subsection (2) or subsection (3) of this section are,—
 - (a) In the case of an assertion under subsection (2) (a) of this section, the assignee and anyone claiming through the assignee, whether or not the person claiming through the assignee has notice of the assertion; and
 - (b) In the case of an assertion under subsection (2) (b) of this section, anyone to whose notice the assertion is brought; and
 - (c) In the case of an assertion under subsection (3) (a) of this section, anyone into whose hands that original or copy comes, whether or not the identification is still present or visible; and
 - (d) In the case of an assertion under subsection (3) (b) of this section, the person to whom the licence is granted and any person into whose hands a copy made in pursuance of the licence comes, whether or not the person has notice of the assertion.
- (5) In an action for infringement of the right, the court shall, in considering remedies, take into account any delay in asserting the right.

Cf. Copyright, Designs and Patents Act 1988, s. 78 (U.K.)

97. Exceptions to right to be identified—

- (1) The right conferred by section 94 of this Act is subject to the exceptions set out in this section.
- (2) The right does not apply in relation to—
 - (a) A computer program; or
 - (b) A computer-generated work; or
 - (c) The design of a typeface.
- (3) The right is not infringed by an act that, under any of the following provisions of this Act, would not infringe copyright in the work:
 - (a) Section 41 (which relates to the incidental copying of a work in an artistic work, sound recording, film, broadcast, or cable programme):
 - (b) Section 42 (which relates to criticism, review, and news reporting):
 - (c) Section 49 (which relates to things done for the purposes of an examination):
 - (d) Section 59 (which relates to parliamentary and judicial proceedings):
 - (e) Section 60 (which relates to Royal commissions and statutory inquiries):
 - (f) Section 67 (which relates to acts permitted on assumptions as to expiry of copyright or death of author in relation to anonymous or pseudonymous works).
- (4) The right does not apply in relation to any work made for the purpose of reporting current events.

- (5) The right does not apply in relation to the publication, in—
- (a) A newspaper, magazine, or similar periodical; or
 - (b) An encyclopaedia, dictionary, year-book, or other collective work of reference—,

of a literary, dramatic, musical, or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.

(6) The right does not apply to any act done by or with the licence of the copyright owner in relation to a work in which copyright first vested in the author's employer under section 21 (2) of this Act or in the director's employer under section 5 (2) (b) of this Act, if—

- (a) The author or director cannot readily be identified at the time the act; or
- (b) In the case of a literary, dramatic, musical, or artistic work—
 - (i) More than 2 persons were involved in the creation of the work and it is impracticable at the time of the act to identify the respective contributions of each person to the work; and
 - (ii) The authors have not previously been identified in or on published copies of the work.

(7) The right does not apply in relation to—

- (a) A work in which Crown copyright exists under section 26 of this Act; or
- (b) A work in which copyright first vested in an international organisation under section 28 of this Act,—

unless the author or director has previously been identified as such in or on published copies of the work.

(8) The right does not apply in relation to—

- (a) A film that is an advertisement; or
- (b) A part of a film, where that part—
 - (i) Appears incidentally in another film; or
 - (ii) Is broadcast on television; or
 - (iii) Is included in a cable programme,—if that part is not a substantial part of the film.

Cf. Copyright, Designs and Patents Act 1988, s. 79 (U.K.)

Right to Object to Derogatory Treatment of Work

98. Right to object to derogatory treatment of work—

- (1) For the purposes of this section and section 99 of this Act,—
- (a) The term “treatment” of a work means any addition to, deletion from, alteration to, or adaptation of the work, other than—
 - (i) A translation of a literary or dramatic work; or
 - (ii) An arrangement or transcription of a musical work involving no more than a change of key or register; and
- (b) The treatment of a work is derogatory if, whether by distortion or mutilation of the work or otherwise, the treatment is prejudicial to the honour or reputation of the author or director;—

and in the following provisions of this section any reference to a derogatory treatment of a work shall be construed accordingly.

- (2) Subject to sections 100 and 101 of this Act,—
- (a) The author of a literary, dramatic, musical, or artistic work that is a copyright work; and
- (b) The director of a film that is a copyright work—

has the right not to have his or her work subjected to a derogatory treatment.

Cf. Copyright, Designs and Patents Act 1988, s. 80 (1), (2), (8) (U.K.)

99. Content of right to object to derogatory treatment—

(1) In the case of a literary, dramatic, or musical work, the right conferred by section 98 (2) of this Act is infringed by a person who—

- (a) Publishes commercially, performs in public, broadcasts, or includes in a cable programme a derogatory treatment of the work; or
- (b) Issues to the public copies of
 - (i) A film or sound recording of; or
 - (ii) A film or sound recording that includes—

a derogatory treatment of the work.

(2) In the case of an artistic work, the right conferred by section 98 (2) of this Act is infringed by a person who—

- (a) Publishes commercially or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme a visual image of a derogatory treatment of the work; or
- (b) Shows in public a film that includes a visual image of a derogatory treatment of the work or issues to the public copies of such a film; or
- (c) In the case of—
 - (i) A sculpture; or
 - (ii) A work of architecture in the form of a model for a building; or
 - (iii) A work of artistic craftsmanship,—

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

(3) Subsection (2) of this section does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment the author has the right to require the identification to be removed.

(4) In the case of a film, the right conferred by section 98 (2) of this Act is infringed by a person who—

- (a) Shows in public, broadcasts, or includes in a cable programme a derogatory treatment of the film; or
- (b) Issues to the public copies of a derogatory treatment of the film; or
- (c) Along with the film,—
 - (i) Plays in public, broadcasts, or includes in a cable programme; or
 - (ii) Issues to the public copies of—a derogatory treatment of the film sound-track.

(5) The right conferred by section 98 (2) of this Act extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director of the work, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.

(6) The right conferred by section 98 (2) of this Act is infringed by a person who, in the course of a business,—

- (a) Possesses; or
- (b) Sells or lets for hire; or
- (c) Offers or exposes for sale or hire; or
- (d) Exhibits in public or distributes—

an object that is, and that the person knows or has reason to believe is, a work or a copy of a work that—

- (e) Has been subjected to derogatory treatment; and
- (f) Has been, or is likely to be, the subject of any of the acts described in this section in circumstances infringing the right conferred by section 98 (2) of this Act.

(7) The right conferred by section 98 (2) of this Act is infringed by a person who does an act described in subsection (1) or subsection (2) or subsection (4) or subsection (6) of this section or who authorises another person to do such an act.

Cf. Copyright, Designs and Patents Act 1988, ss. 80 (3)–(7), 83 (U.K.)

100. Exceptions to right to object to derogatory treatment of literary, dramatic, musical, or artistic work—

(1) The right conferred by section 98 (2) of this Act is, in relation to literary, dramatic, musical, or artistic works, subject to the exceptions set out in this section.

(2) The right does not apply to—

- (a) A computer program; or
- (b) A computer-generated work; or
- (c) The design of a typeface.

(3) The right does not apply in relation to the publication, in—

- (a) A newspaper, magazine, or similar periodical; or
- (b) An encyclopaedia, dictionary, year-book, or other collective work of reference,—

of a literary, dramatic, musical, or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.

(4) The right does not apply in relation to any subsequent exploitation elsewhere, without any modification of the published version, of a work to which subsection (3) of this section applies.

(5) The right is not infringed by an act that, under section 67 of this Act, would not infringe copyright.

(6) The right does not apply in relation to any work made for the purpose of reporting current events.

(7) The right is not infringed by any act done for the purpose of—

- (a) Avoiding the commission of an offence; or
- (b) Complying with a duty imposed by or under any enactment—

if,—

(c) Where the author is identified at the time of the act, there is a clear and reasonably prominent indication, given at the time of the act and appearing with the identification, that the work has been subjected to treatment to which the author has not consented; or

(d) Where the author has previously been identified in or on published copies of the work, there is a clear and reasonably prominent indication, given at the time of the act, that the work has been subjected to treatment to which the author has not consented.

(8) The right does not apply to any act done, by or with the licence of the copyright owner, in relation to—

- (a) work in which copyright first vested in the author's employer under section 21 (2) of this Act; or
- (b) A work in which Crown copyright exists under section 26 of this Act; or
- (c) A work in which copyright first vested in an international organisation under section 28 of this Act—

unless the author—

(d) Is identified at the time of the act; or

(e) Has previously been identified in or on published copies of the work.

(9) Where the right applies under subsection (8) of this section, the right is not infringed if,—

(a) Where the author is identified at the time of the act, there is a clear and reasonably prominent indication, given at the time the act and appearing with the identification, that the work has been subjected to treatment to which the author has not consented; or

(b) Where the author has previously been identified in or on published copies of the work, there is a clear and reasonably prominent indication, given at the time of the act, that the work has been subjected to treatment to which the author has not consented.

101. Exceptions to right to object to derogatory treatment of films—

(1) The right conferred by section 98 (2) of this Act is, in relation to films, subject to the exceptions set out in this section.

(2) The right does not apply in relation to any film made for the purpose of reporting current events.

- (3) The right is not infringed by any act done for the purpose of,—
- (a) In relation to the broadcast of a film,—
- (i) Complying with a duty imposed under section 4 of the Broadcasting Act 1989; or
 - (ii) Avoiding the commission of an offence; or
 - (iii) Complying with a duty imposed by or under any enactment; or
- (b) In relation to the inclusion of a film in a cable programme service,—
- (i) Maintaining standards that are consistent with the observance of good taste and decency and the maintenance of law and order; or
 - (ii) Avoiding the commission of an offence; or
 - (iii) Complying with a duty imposed by or under any enactment—

if,—

- (c) Where the director is identified at the time of the act, there is a clear and reasonably prominent indication, given at the time of the act and appearing with the identification, that the film has been subjected to treatment to which the director has not consented; or
- (d) Where the director has previously been identified in or on published copies of the work, there is a clear and reasonably prominent indication, given at the time of the act, that the film has been subjected to treatment to which the director has not consented.

(4) The right does not apply to any act done, by or with the licence of the copyright owner, in relation to—

- (a) A film in which copyright first vested in the director's employer under section 5 (2) (b) of this Act; or
- (b) A film in which Crown copyright exists under section 26 of this Act; or
- (c) A film in which copyright first vested in an international organisation under section 28 of this Act—

unless the director—

- (d) Is identified at the time of the act; or
- (e) Has previously been identified in or on published copies of the film.
- (5) Where the right applies under subsection (4) of this section, the right is not infringed if,—
- (a) Where the director is identified at the time of the act, there is a clear and reasonably prominent indication, given at the time of the act and appearing with the identification, that the film has been subjected to treatment to which the director has not consented; or
- (b) Where the director has previously been identified in or on published copies of the work, there is a clear and reasonably prominent indication, given at the time of the act, that the film has been subjected to treatment to which the director has not consented.

(6) The right is not infringed, in relation to the broadcast of a film or the inclusion of a film in a cable programme service, where the person making the broadcast or including the film in a cable programme service—

- (a) Makes such deletion or deletions from the film as is or are reasonably required to enable that person to—
- (i) Comply with guidelines followed by that person as to the programmes that may be shown in particular time periods; or
 - (ii) Fit the film into the time scheduled to show it; or
- (b) Broadcasts or transmits the film in separate parts because of its length; or
- (c) Uses a clip of a film in an advertisement for the showing of a film.

Cf. Copyright, Designs and Patents Act 1988, ss. 81, 82 (U.K.)

False Attribution

102. False attribution of identity of author or director—

(1) In this section, the term “attribution”, in relation to a literary, dramatic, musical, or artistic work or a film, means an express or implied statement as to the identity of the author of the work or the director of the film.

(2) A person has the right—

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

(b) Not to have a film falsely attributed to him or her as director.

(3) The right conferred by subsection (2) of this section is infringed by a person who—

(a) Issues to the public copies of—

(i) A literary, dramatic, musical, or artistic work; or

(ii) A film—

in or on which there is a false attribution; or

(b) Exhibits in public—

(i) An artistic work; or

(ii) A copy of an artistic work,—

in or on which there is a false attribution,—

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

(4) The right conferred by subsection (2) of this section is infringed by a person who,—

(a) In the case of a literary, dramatic, or musical work,—

(i) Performs the work in public; or

(ii) Broadcasts the work; or

(iii) Includes the work in a cable programme,—
accompanied by a false attribution; or

(b) In the case of a film,—

(i) Shows the film in public; or

(ii) Broadcasts the film; or

(iii) Includes the film in a cable programme,—
accompanied by a false attribution,—

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

(5) The right conferred by subsection (2) of this section is infringed by—

(a) The issue to the public; or

(b) The public display—

of material containing a false attribution in connection with any of the acts referred to in subsection (3) or subsection (4) of this section.

(6) The right conferred by subsection (2) of this section is infringed by a person who, in the course of a business,—

(a) Possesses a copy of—

(i) A literary, dramatic, musical, or artistic work; or

(ii) A film—

in or on which there is a false attribution; or

(b) Sells or lets for hire, offers or exposes for sale or hire, exhibits in public, or distributes a copy of—

(i) A literary, dramatic, musical, or artistic work; or

(ii) A film—

in or on which there is a false attribution; or

(c) In the case of an artistic work, possesses the work when there is a false attribution in or on the work; or

- (d) Sells, or lets for hire, offers or exposes for sale or hire, distributes, or exhibits in public an artistic work in or on which there is a false attribution,—

knowing, or having reason to believe, that there is such an attribution and that the attribution is false.

(7) The right conferred by subsection (2) of this section is infringed by a person who does an act described in this section or who authorises another person to do such an act.

Cf. Copyright, Designs and Patents Act 1988, s. 84 (1)–(5), (7) (U.K.); 1962, No. 33, s. 62 (1), (2)

103. False representation as to literary, dramatic, or musical work—

(1) In this section, the term “representation”, in relation to a literary, dramatic, or musical work, means an express or implied statement as to the work being an adaptation of a work by a particular author.

(2) A person has the right not to have a literary, dramatic, or musical work falsely represented as being an adaptation of a work of which the person is the author.

(3) The right conferred by subsection (2) of this section is infringed by a person who issues to the public copies of a literary, dramatic, or musical work in or on which there is a false representation, knowing or having reason to believe that the representation is false.

(4) The right conferred by subsection (2) of this section is infringed by a person who performs in public, broadcasts, or includes in a cable programme a literary, dramatic, or musical work, accompanied by a false representation, knowing or having reason to believe that the representation is false.

(5) The right conferred by subsection (2) of this section is infringed by—

- (a) The issue to the public; or
- (b) The public display—

of material containing a false representation in connection with any of the acts mentioned in subsection (3) or subsection (4) of this section.

(6) The right conferred by subsection (2) of this section is infringed by a person who, in the course of a business,—

- (a) Possesses a copy of a literary, dramatic, or musical work in or on which there is a false representation; or
- (b) Sells or lets for hire, offers or exposes for sale or hire, distributes, or exhibits in public a copy of a literary, dramatic, or musical work in or on which there is a false representation,—

knowing, or having reason to believe, that there is such a representation and that the representation is false.

(7) The right conferred by subsection (2) of this section is infringed by a person who does an act described in this section or who authorises another person to do such an act.

Cf. Copyright, Designs and Patents Act 1988, s. 84 (8) (a) (U.K.); 1962, No. 33, s. 62 (3)

104. False representations as to artistic work—

(1) In this section, the term “representation” means an express or implied statement as to a matter referred to in paragraph (a) or paragraph (b) or paragraph (c) of subsection (2) of this section.

(2) The author of an artistic work has the right—

- (a) Not to have the work falsely represented as the unaltered work of the author if the work has been altered after the author parted with possession of the work; and
- (b) Not to have a copy of a work that has been altered after the author parted with possession of the work falsely represented as a copy of an unaltered work of the author; and
- (c) Not to have a copy of an artistic work falsely represented as being a copy made by the author of the artistic work.

(3) The right conferred by subsection (2) of this section is infringed by a person who exhibits in public an artistic work, or a copy of an artistic work, as the case may be, in or on which there is a false representation, knowing or having reason to believe that the representation is false.

(4) The right conferred by subsection (2) of this section is infringed by—

- (a) The issue to the public; or

- (b) The public display—

of material containing a false representation in connection with any act referred to in subsection (3) of this section.

(5) The right conferred by subsection (2) of this section is infringed by a person who, in the course of a business,—

- (a) Possesses an artistic work or a copy of an artistic work, as the case may be, in or on which there is a false representation or when there is a false representation in or on the work or copy; or
(b) Sells or lets for hire, offers or exposes for sale or hire, distributes, or exhibits in public an artistic work or a copy of an artistic work, as the case may be, in or on which there is a false representation or when there is a false representation in or on the work or copy,—

knowing or having reason to believe there is such a representation and that the representation is false.

(6) The right conferred by subsection (2) of this section is infringed by a person who does an act described in this section or who authorises another person to do such an act.

Cf. Copyright, Designs and Patents Act 1988, s. 84 (6) (8) (b) (U.K.); 1962, No. 33, s. 62 (4), (6)

Right to Privacy of Certain Photographs and Films

105. Right to privacy of certain photographs and films—

(1) A person who, for private and domestic purposes, commissions the taking of a photograph or the making of a film has, where copyright exists in the resulting work but is owned by some other person, the right—

- (a) Not to have copies of the work issued to the public; and
(b) Not to have the work exhibited or shown in public; and
(c) Not to have the work broadcast or included in a cable programme.

(2) Subject to subsection (3) of this section, the right conferred by subsection (1) of this section is infringed by a person who does an act of the kind described in paragraph (a) or paragraph (b) or paragraph (c) of subsection (1) of this section.

(3) The right conferred by subsection (1) of this section is not infringed by an act that, under any of the following provisions of this Act, would not infringe copyright in the work:

- (a) Section 41 (which relates to the incidental copying of a work in an artistic work, film, broadcast or cable programme);
(b) Section 59 (which relates to parliamentary and judicial proceedings);
(c) Section 60 (which relates to Royal commissions and statutory inquiries);
(d) Section 66 (which relates to acts done under statutory authority);
(e) Section 67 (which relates to acts permitted on assumptions as to expiry of copyright or death of the author in relation to anonymous or pseudonymous works).

(4) The right conferred by subsection (1) of this section is infringed by a person who does an act described in subsection (2) of this section or who authorises another person to do such an act.

Cf. Copyright, Designs and Patents Act 1988, s. 85 (U.K.)

Supplementary Provisions

106. Duration of rights—

(1) The rights conferred by the following provisions of this Act expire when the copyright in any work that is the subject of the right expires:

- (a) Section 94 (which relates to the right to be identified as author or director);
(b) Section 98 (which relates to the right to object to derogatory treatment of a work);
(c) Section 105 (which relates to the right to privacy of certain photographs and films).

(2) The rights conferred by the following provisions of this Act expire at the end of the period of 20 years from the end of the calendar year in which the person who is entitled to the right dies:

- (a) Section 102 (which relates to false attribution of the identity of an author or director);
- (b) Section 103 (which relates to a false representation as to literary, dramatic, or musical works);
- (c) Section 104 (which relates to false representations as to artistic works).

Cf. Copyright, Designs and Patents Act 1988, s. 86 (U.K.); 1962, No. 33, s. 62 (5)

107. Consent and waiver of rights—

(1) It is not an infringement of any of the rights conferred by this Part of this Act to do any act to which the person who is entitled to the right has consented.

(2) Any of the rights conferred by this Part of this Act may be waived by instrument in writing signed by the person waiving the right.

(3) A waiver given pursuant to subsection (2) of this section—

- (a) May relate to a specific work, or to works of a specified description that are in existence, in progress, or about to be commenced; and
- (b) Shall state the rights to which the waiver relates; and
- (c) May be expressed to be subject to revocation; and
- (d) If made in favour of the owner or prospective owner of the copyright in the work or works to which the waiver relates, shall be presumed to extend to his or her licensees and successors in title unless a contrary intention is expressed.

Cf. Copyright, Designs and Patents Act 1988, s. 87 (U.K.)

108. Application of provisions to joint works other than films—

(1) This section does not apply to a film.

(2) A consent or waiver under section 107 of this Act by one joint author does not affect the rights of the other joint authors.

(3) The right conferred by section 94 of this Act is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author, and must be asserted in accordance with section 96 of this Act by each joint author in relation to himself or herself.

(4) The right conferred by section 98 of this Act is, in the case of a work of joint authorship, a right of each joint author.

(5) The right conferred by section 102 of this Act is infringed, in the circumstances described in that section,—

- (a) By any false statement as to the authorship of a work of joint authorship; and
- (b) By the false attribution of joint authorship in relation to a work of sole authorship;—

and such a false attribution infringes the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed.

(6) The right conferred by section 103 of this Act is infringed, in the circumstances described in that section, by any false representation as to an adaptation of a work of joint authorship, and such a false representation infringes the right of each joint author.

(7) The right conferred by section 104 of this Act is infringed, in the circumstances described in that section, by any false representation as to a matter referred to in paragraph (a) or paragraph (b) or paragraph (c) of subsection (2) of that section, and such a false representation infringes the right of each joint author.

(8) The right conferred by section 105 of this Act is, in the case of a photograph made in pursuance of a joint commission, a right of each person who commissioned the taking of the photograph, so that—

- (a) The right of each person is satisfied if he or she consents to the act in question; and
- (b) A waiver under section 107 of this Act by one person does not affect the rights of the other persons.

Cf. Copyright, Designs and Patents Act 1988, s. 88 (1)–(4), (6) (U.K.)

109. Application of provisions to joint works that are films—

- (1) Where a film was, or is alleged to have been, jointly directed,—
 - (a) A consent or waiver under section 107 of this Act by one joint director does not affect the rights of the other joint directors; and
 - (b) The right conferred by section 94 of this Act is a right of each joint director to be identified as a joint director, and must be asserted in accordance with section 96 of this Act by each joint director in relation to himself or herself; and
 - (c) The right conferred by section 98 of this Act is a right of each joint director; and
 - (d) The right conferred by section 102 of this Act is infringed, in the circumstances described in that section,—
 - (i) By any false statement as to the directorship of the film; or
 - (ii) By the false attribution of joint directorship in relation to a film of sole directorship;—
and such a false attribution infringes the right of every person to whom directorship of any description is, whether rightly or wrongly, attributed.

(2) For the purposes of subsection (1) of this section, a film is jointly directed if the film is made by the collaboration of 2 or more directors and the contribution of each director is not distinct from that of the other director or directors.

(3) The right conferred by section 105 of this Act is, in the case of a film made in pursuance of a joint commission, a right of each person who commissioned the making of the film, so that—

- (a) The right of each person is satisfied if he or she consents to the act in question; and
- (b) A waiver under section 107 of this Act by one person does not affect the rights of the other persons.

Cf. Copyright, Designs and Patents Act 1988, s. 88 (5) (U.K.)

110. Application of provisions to parts of works—

(1) The rights conferred by section 94 or section 105 of this Act apply in relation to the whole or any substantial part of a work.

(2) The rights conferred by the following provisions of this Act apply in relation to the whole or any part of a work:

- (a) Section 98 (which relates to the right to object to derogatory treatment of a work):
- (b) Section 102 (which relates to false attribution of the identity of an author or director):
- (c) Section 103 (which relates to a false representation as to literary, dramatic, or musical works):
- (d) Section 104 (which relates to false representations as to artistic works).

Cf. Copyright, Designs and Patents Act 1988, s. 89 (U.K.)

PART V

DEALING WITH RIGHTS IN COPYRIGHT WORKS

Licences to Deal with Copyright Works

111. Licences—

(1) A licence granted by a copyright owner is binding on every successor in title to that person's interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Act to doing anything—

- (a) With, or without, the licence of the copyright owner; or
- (b) Other than pursuant to a copyright licence—

shall be construed accordingly.

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

Cf. Copyright, Designs and Patents Act 1988, s. 90 (4), 92 (2) (U.K.); 1962, No. 33, s. 56 (4)

112. Warranty implied in certain licences—

(1) Where any person grants a licence for—

- (a) The performance, broadcast, or inclusion in a cable programme of a copyright work that is a literary, dramatic, or musical work or a sound recording or film; or
- (b) The inclusion of a copyright work that is an artistic work in a performance, broadcast, or cable programme,—

there shall be implied a warranty in the licence either—

- (c) That the person by whom or on whose behalf the licence is granted is the owner of the copyright in the work, sound recording, or film that is the subject of the licence; or
- (d) That the person by whom or on whose behalf the licence is granted is authorised to grant such a licence by the owner of the copyright in the work, sound recording, or film that is the subject of the licence.

(2) Where a court is satisfied that—

- (a) A person falsely claiming to be, or to have the licence of, the owner of the copyright in a literary, dramatic, musical, or artistic work or a sound recording or film has threatened or commenced proceedings designed to—

(i) Prohibit a performance or broadcast of that work, sound recording, or film, or the inclusion of that work, sound recording, or film in a cable programme; or

(ii) Claim damages in respect of a performance or broadcast of that work, recording, or film, or the inclusion of that work, recording, or film in a cable programme; and

- (b) As a result of the threat or commencement of proceedings, the work, recording, or film has not been so performed, broadcast, or included in a cable programme,—

the court may award damages sufficient to recompense the person threatened or the defendant in such proceedings, as the case may be, or any other person interested in the proposed performance, broadcast, or cable programme, for any loss sustained because the performance, broadcast, or cable programme did not proceed.

(3) The provisions of this section shall have effect notwithstanding any provision to the contrary in any licence, and shall extend to all licences whether granted before or after the commencement of this Act.

Cf. 1962, No. 33, s. 63

Transmission of Copyright

113. Transmission of copyright—

(1) Copyright is transmissible, as personal or moveable property, by—

- (a) Assignment; or
- (b) Testamentary disposition; or
- (c) Operation of law.

(2) A transmission of copyright may be partial, that is, limited so as to apply—

- (a) To one or more, but not all, of the things the copyright owner has the exclusive right to do;
- (b) To part, but not the whole, of the period for which the copyright is to exist.

Cf. Copyright, Designs and Patents Act 1988, s. 90 (1), (2) (U.K.); 1962, No. 33, s. 56 (1), (2)

114. Assignment—

An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor.

Cf. Copyright, Designs and Patents Act 1988, s. 90 (3) (U.K.); 1962, No. 33, s. 56 (3)

115. Copyright to pass under will with unpublished works—

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

- (a) An original document or other material thing recording or embodying a literary, dramatic, musical, or artistic work that was not published before the death of the testator; or
- (b) An original material thing containing a sound recording or film that was not published before the death of the testator,—

the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil to that will, be construed as including the copyright in the work in so far as the testator was the copyright owner immediately before his or her death.

Cf. Copyright, Designs and Patents Act 1988, s. 93 (U.K.); 1962, No. 33, s. 59

116. Future copyright—

(1) Future copyright shall be capable of being assigned, wholly or partially, in the same manner and in all respects as if the copyright were then in existence, and on coming into existence the copyright shall vest in the assignee or the assignee's successor in title accordingly.

(2) Sections 111 (1), 113 (2), and 114 of this Act apply to future copyright in the same manner as they apply to existing copyright.

(3) A licence granted by a person to whom future copyright has been assigned is binding on every successor in title to that person's interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Act to doing anything—

- (a) With, or without, the licence of the copyright owner; or
- (b) Other than pursuant to a copyright licence—

shall be construed accordingly.

Cf. Copyright, Designs and Patents Act 1988, s. 91 (U.K.); 1962, No. 33, s. 57

117. Right to make conditions in respect of certain unpublished works—

(1) This section applies where the owner of the copyright in an unpublished literary, dramatic, or musical work, or an unpublished artistic work other than a photograph, has, whether before or after the commencement of this Act, transferred or bequeathed to an institution—

- (a) The property in or possession of the manuscript of the literary, dramatic, or musical work or a copy of the manuscript; or
- (b) The property in or possession of the artistic work,—

subject to any conditions prohibiting, restricting, or regulating publication of the work for a specified period or without any limit on the period.

(2) While the manuscript, copy, or work is in the possession of the institution, any publication of the work in breach of such a condition by—

- (a) The institution owning the manuscript, copy, or work; or
- (b) The institution having possession of the manuscript, copy, or work; or
- (c) Any other person—

shall, notwithstanding that the copyright in the work may have expired, be actionable as if copyright continued to exist in the work and the publication were an infringement of the copyright.

(3) Nothing in this section applies to any publication with the consent of the person who would be the owner of the copyright in the work if the copyright had not expired.

(4) In this section, the term "institution" means the Crown, a local body, a prescribed library or archive within the meaning of section 50 of this Act, an institution within the meaning on section 159 of the Education Act 1989, or any other institution prescribed by regulations made under this Act.

Cf. 1962, No. 33, s. 58

Moral Rights

118. Moral rights not assignable—

The rights conferred by Part IV of this Act are not assignable.

Cf. Copyright, Designs and Patents Act 1988, s. 94 (U.K.)

119. Transmission of moral rights on death—

(1) On the death of a person entitled to the right conferred by section 94 or section 98 or section 105 of this Act,—

- (a) The right passes to such person as he or she 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 the estate, the right passes to the person to whom the copyright passes; or
- (c) If or to the extent that the right does not pass under paragraph (a) or paragraph (b) of this subsection, the right is exercisable by the personal representatives.

(2) Where—

- (a) Under subsection (1) (b) of this section any right passes to the person to whom the copyright passes; and

(b) The copyright passes in part to one person and in part to another,—

the right shall pass in the same manner as the copyright.

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

- (a) In the case of the right conferred by section 94 of this Act, the right may be asserted by any of those persons; and
- (b) In the case of the right conferred by section 98 or section 105 of this Act, the right is exercisable by each of those persons and is satisfied in relation to any of those persons if one of them consents to the treatment or act in question; and
- (c) Any waiver of the right in accordance with section 107 of this Act by one of those persons does not affect the rights of the others.

(4) A consent or waiver previously given or made binds any person to whom a right passes under subsection (1) of this section.

(5) Any infringement after a person's death of the right conferred by section 102 or section 103 or section 104 of this Act is actionable by his or her personal representatives.

(6) Any damages recovered by personal representatives in respect of an infringement after the death of a person entitled to a right conferred by Part IV of this Act shall devolve as part of the estate as if the right of action had existed and been vested in the person immediately before his or her death.

Cf. Copyright, Designs and Patents Act 1988, s. 95 (U.K.)

PART VI

REMEDIES FOR INFRINGEMENT

Rights and Remedies of Copyright Owner

120. Infringement actionable by copyright owner—

(1) An infringement of copyright is actionable by the copyright owner.

(2) In proceedings for infringement of copyright, all such relief way of damages, injunctions, accounts, or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.

(3) This section has effect subject to the following provisions of this Part of this Act.

Cf. Copyright, Designs and Patents Act 1988, s. 96 (U.K.); 1962, No. 33, s. 24 (1)

121. Provisions as to damages in infringement proceedings—

(1) Where, in proceedings for infringement of copyright, it is proved or admitted that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright existed in the work to which the proceedings relate, the plaintiff is not entitled to damages but, without prejudice to the award of any other remedy, is entitled to an account of profits.

(2) In proceedings for infringement of copyright, the court may, having regard to all the circumstances and in particular to—

(a) The flagrancy of the infringement; and

(b) Any benefit accruing to the defendant by reason of the infringement,—

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

(3) In proceedings for infringement of copyright in respect of the construction of a building, no injunction or other order shall be made—

(a) After the construction of the building has been begun, so as to prevent the building from being completed; or

(b) So as to require the building, in so far as it has been constructed, to be demolished.

Cf. Copyright, Designs and Patents Act 1988, s. 97 (U.K.); 1962, No. 33, s. 24 (2)–(4)

122. Order for delivery up in civil proceedings—

(1) Where a person—

(a) Has an infringing copy of a work in that person's possession, custody, or control in the course of a business; or

(b) Has in that person's possession, custody, or control an object specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that the object has been or is to be used to make infringing copies,—

the owner of the copyright in the work may apply to the court for an order that the infringing copy or object be delivered up to the copyright owner or such other person as the court may direct.

(2) No order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 134 of this Act.

(3) A person to whom an infringing copy or other object is delivered up in pursuance of an order under this section shall, if an order under section 134 of this Act is not made, retain the copy or object pending the making of an order, or the decision not to make an order, under that section.

(4) Notwithstanding any rule of court, an order may be made pursuant to this section on an *ex parte* application by the copyright owner where service of notice of the application would cause undue delay or other serious detriment to the copyright owner.

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

Cf. Copyright, Designs and Patents Act 1988, s. 99 (U.K.)

Rights and Remedies of Exclusive Licensee

123. Rights and remedies of exclusive licensee—

(1) An exclusive licensee has, except against the copyright owner, the same rights and remedies under sections 120, 121, and 122 of this Act in respect of matters occurring after the grant of the licence as if the licence were an assignment.

(2) The rights and remedies of the exclusive licensee under sections 120, 121, and 122 of this Act are concurrent with those of the copyright owner.

(3) In proceedings brought by an exclusive licensee pursuant to this section, a defendant may avail himself or herself or itself of any defence that would have been available if the proceedings had been brought by the copyright owner.

Cf. Copyright, Designs and Patents Act 1988, s. 101 (U.K.); 1962, No. 33, s. 26 (2) (a), (b), (4)

124. Exercise of concurrent rights—

(1) Where proceedings for infringement of copyright brought by the copyright owner or an exclusive licensee relate (wholly or partly) to an infringement in respect of which the copyright owner and the exclusive licensee have concurrent rights of action, the copyright owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed unless the other is either joined as a plaintiff or added as a defendant.

(2) A copyright owner or exclusive licensee who is joined as a plaintiff or added as a defendant pursuant to subsection (1) of this section is not liable for any costs in the proceedings unless that person takes part in the proceedings.

(3) Subsections (1) and (2) of this section do not affect the granting of interlocutory relief on an application by a copyright owner or exclusive licensee alone.

(4) Whether or not the copyright owner and the exclusive licensee are both parties to proceedings for infringement of copyright that relate (wholly or partly) to an infringement in respect of which they have or had concurrent rights of action,—

(a) The court shall, in assessing damages, take into account—

(i) The terms of the licence; and

(ii) Any pecuniary remedy already awarded or available to either the copyright owner or the exclusive licensee in respect of the infringement; and

(b) No account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of either the copyright owner or the exclusive licensee in respect of the infringement; and

(c) The court shall, if an account of profits is directed, apportion the profits between the copyright owner and the exclusive licensee in such manner as the court considers just, subject to any agreement between them.

(5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 122 of this Act; and the court may on the application of the licensee make such order under that section as it thinks fit having regard to the terms of the licence.

Cf. Copyright, Designs and Patents Act 1988, s. 102 (U.K.); 1962, No. 33, s. 26 (3)–(8)

Rights and Remedies in relation to Moral Rights

125. Infringement of moral rights actionable—

(1) An infringement of a right conferred by Part IV of this Act is actionable by the person entitled to the right.

(2) In proceedings for infringement of a right conferred by Part IV of this Act, relief by way of damages and injunction is available to the plaintiff.

(3) In proceedings for infringement of the right conferred by section 98 (2) of this Act, the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work.

Cf. Copyright, Designs and Patents Act 1988, s. 103 (U.K.); 1962, No. 33, s. 62 (8)

Presumptions

126. Presumptions relevant to literary, dramatic, musical, or artistic works—

(1) The presumptions set out in subsections (2) to (5) of this section apply in proceedings brought under this Act with respect to a literary, dramatic, musical, or artistic work.

(2) Where a name purporting to be that of the author appeared on copies of a literary, dramatic, or musical work as published or on an artistic work when it was made, the person whose name appeared shall be presumed, until the contrary is proved,—

- (a) To be the author of the work; and
- (b) To have made the work in circumstances not falling within subsections (2) and (3) of section 21, or section 26, or section 28 of this Act.

(3) In the case of a work alleged to be a work of joint authorship, subsection (2) of this section applies in relation to each person alleged to be one of the authors.

(4) Where no name purporting to be that of the author appeared on copies of the work as published or on the work when it was made, but—

- (a) The work qualifies for copyright under section 19 of this Act; and
- (b) A name purporting to be that of the publisher appeared on copies of the work as first published,—

the person whose name appeared shall be presumed, until the contrary is proved, to represent the author and shall be entitled to protect and enforce the author's rights.

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

- (a) That the work is an original work; and
- (b) That the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

Cf. Copyright, Designs and Patents Act 1988, s. 104 (U.K.); 1962, No. 33, s. 27 (2)–(5)

127. Presumptions relevant to certain artistic works—

(1) This section applies to any proceedings for infringement of copyright in any artistic work of which copies in 3 dimensions have been issued to the public by or with the licence of the owner of the copyright in that artistic work.

(2) In any proceedings to which this section applies, where copies as issued to the public, whether in New Zealand or in any other country, bear a clear and legible label or other mark indicating the following claims, namely,—

- (a) That copyright existed in the artistic work of which the copy was made; and
- (b) That a named person was the owner of the copyright in the artistic work at the time the copy was issued to the public; and
- (c) That a named person was the exclusive licensee of the copyright owner at the time the copy was issued to the public; and
- (d) That the copy was first issued to the public in a specified year,—

it shall be presumed until the contrary is proved—

- (e) That at all material times the defendant had knowledge of each of the claims specified in paragraphs (a) to (d) of this subsection; and
- (f) That the copy was first made available to the public in the year specified.

(3) For the purposes of subsection (2) of this section, the symbol “©” on a label or other mark shall be taken to indicate that copyright is claimed to exist in the artistic work of which the copy so labelled or marked is made.

(4) Nothing in this section limits or affects section 126 of this Act.

Cf. 1962, No. 33, s. 27A; 1985, No. 134, s. 7 (1)

128. Presumptions relevant to computer programs, sound recordings, and films—

(1) In proceedings brought under this Act with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement—

- (a) That a named person was the owner of copyright in the program at the date of the issue of the copies in electronic form; or
- (b) That copies of the program were first issued to the public in electronic form in a specified year or that the program was first published in a specified country,—

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

(2) In proceedings brought under this Act with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating—

(a) That a named person was the owner of copyright in the recording at the date of the issue of the copies; or

(b) That the recording was first published in a specified year or in a specified country,—

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

(3) In proceedings brought under this Act with respect to a film, where copies of the film as issued to the public bear a statement—

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

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

(c) That the film was first published in a specified year or in a specified country,—

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

(4) The presumptions created in subsections (1) to (3) of this section apply in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public in the same manner as they apply in proceedings relating to an infringement alleged to have occurred after the date on which the copies were issued to the public.

(5) In proceedings brought under this Act with respect to a film, where the film as shown in public, broadcast, or included in a cable programme bears a statement—

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

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

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

(6) The presumption created by subsection (5) of this section applies in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast, or included in a cable programme in the same manner as it applies in proceedings relating to an infringement alleged to have occurred after the date on which the film was shown in public, broadcast, or included in a cable programme.

Cf. Copyright, Designs and Patents Act 1988, s. 105 (U.K.); 1962, No. 33, s. 27 (7)

129. Presumptions relevant to works subject to Crown copyright—

In proceedings brought under this Act with respect to a literary, dramatic, or musical work in which Crown copyright exists, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct until the contrary is proved.

Cf. Copyright, Designs and Patents Act 1988, s. 106 (U.K.)

130. Unjustified proceedings—

(1) Where a person brings proceedings alleging an infringement of copyright, a court may, on the application of any person against whom the proceedings are brought,—

(a) Make a declaration that the bringing of proceedings was unjustified;

(b) Make an order for the payment of damages for any loss suffered by the person against whom the proceedings are brought.

(2) A court shall not grant relief under this section if the person who brought the proceedings proves that the acts in respect of which proceedings were brought constituted, or would have constituted if they had been done, an infringement of the copyright concerned.

(3) Nothing in this section makes a barrister or solicitor of the High Court of New Zealand liable to any proceedings under this section in respect of any act done in his or her professional capacity on behalf of a client.

Cf. 1994, No. 116, s. 40; Copyright, Designs and Patents Act 1988, s. 253 (U.K.)

Offences

131. Criminal liability for making or dealing with infringing objects—

(1) Every person commits an offence against this section who, other than pursuant to a copyright licence,—

- (a) Makes for sale or hire; or
- (b) Imports into New Zealand otherwise than for that person's private and domestic use; or
- (c) Possesses in the course of a business with a view to committing any act infringing the copyright; or
- (d) In the course of a business,—
 - (i) Offers or exposes for sale or hire; or
 - (ii) Exhibits in public; or
 - (iii) Distributes; or
- (e) In the course of a business or otherwise, sells or lets for hire; or
- (f) Distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner—

an object that is, and that the person knows is, an infringing copy of a copyright work.

(2) Every person commits an offence against this section who—

- (a) Makes an object specifically designed or adapted for making copies of a particular copyright work; or
- (b) Has such an object in that person's possession,—

knowing that the object is to be used to make infringing copies for sale or hire or for use in the course of a business.

(3) Subject to subsection (4) of this section, every person commits an offence against this section who—

- (a) Causes a literary, dramatic, or musical work to be performed, where that performance infringes copyright in that work; or
- (b) Causes a sound recording or film to be played in public or shown in public, where that playing or showing infringes copyright in that sound recording or film,—

knowing that copyright in the work or, as the case requires, the sound recording or film would be infringed by that performance or, as the case requires, that playing or that showing.

(4) Nothing in subsection (3) of this section applies in respect of infringement of copyright by the reception of a broadcast or cable programme.

(5) Every person who commits an offence against this section is liable on summary conviction,—

- (a) In the case of an offence against subsection (1) of this section, to a fine not exceeding \$5,000 for every infringing copy to which the offence relates, but not exceeding \$50,000 in respect of the same transaction, or to imprisonment for a term not exceeding 3 months;
- (b) In the case of an offence against subsection (2) or subsection (3) of this section, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 months.

(6) Where any person is convicted of an offence against this section in circumstances where that offence involves the making of profit or gain, that offence shall be deemed to have caused a loss of property for the purposes of section 22 (1) (b) of the Criminal Justice Act 1985, and the provisions of that Act relating to the imposition of the sentence of reparation shall apply accordingly.

(7) Sections 126 to 129 of this Act (which relate to presumptions) do not apply to proceedings for an offence against this section.

(8) Nothing in subsection (1) of this section applies in relation to a work that has been made, copied, published, adapted, or distributed, in an overseas country, by or with the licence of the owner of the copyright in the work in that country.

Cf. Copyright, Designs and Patents Act 1988, s. 107 (U.K.); 1962, No. 33, s. 28 (1)–(3), (5); 1990, No. 71, s. 3

132. Order for delivery up in criminal proceedings—

(1) The court before which proceedings are brought against a person for an offence against section 131 of this Act may, if it is satisfied that, at the time of the defendant's arrest or charge,—

- (a) The defendant had in the defendant's possession, custody, or control in the course of a business an infringing copy of a copyright work; or
- (b) The defendant had in the defendant's possession, custody, or control an object specifically designed or adapted for making copies of a particular copyright work, knowing that the object had been or was to be used to make infringing copies,—

order that the infringing copy or object be delivered up to the copyright owner or to such other person as the court may direct.

(2) An order may be made under subsection (1) of this section 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—

- (a) After the end of the period of 6 years from the date on which the infringing copy or object in question was made; or
- (b) If it appears to the court unlikely that any order will be made under section 134 of this Act in the proceedings.

(3) Sections 126 to 129 of this Act (which relate to presumptions) apply in proceedings for an order under this section.

(4) A person to whom an infringing copy or other object is delivered up pursuant to an order made under this section shall retain the copy or object pending the making of an order, or the decision not to make an order, under section 134 of this Act.

Cf. Copyright, Designs and Patents Act 1988, s. 108 (1), (3), (5) (U.K.); 1962, No. 33, s. 28 (4)

133. Liability of officers of body corporate—

Where any body corporate is convicted of an offence against section 131 of this Act, every director and every person concerned in the management of the body corporate shall be guilty of the offence if it is proved—

- (a) That the act that constituted the offence took place with his or her authority, permission, or consent; and
- (b) That he or she—
 - (i) Knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and
 - (ii) Failed to take all reasonable steps to prevent or stop it.

Cf. 1991, No. 69, s. 340

Disposal of Infringing Copy or Other Object

134. Order as to disposal of infringing copy or other object—

(1) An application may be made to the court for an order that an infringing copy or other object delivered up pursuant to an order made under section 122 or section 132 of this Act shall be—

- (a) Forfeited to the copyright owner; or
- (b) Destroyed or otherwise dealt with as the court thinks fit.

(2) In considering what order (if any) should be made under subsection (1) of this section, the court shall have regard to—

- (a) Whether other remedies available in proceedings for infringement of copyright would be adequate to compensate the copyright owner and to protect the interests of the copyright owner; and
- (b) The need to ensure that no infringing copy is disposed of in a manner that would adversely affect the copyright owner.
- (3) The court shall issue directions as to the service of notice on persons having an interest in the copy or other object.
- (4) Any person having an interest in the copy or other object is entitled—
 - (a) To appear in proceedings for an order under this section, whether or not that person is served with notice; and
 - (b) To appeal against any order made, whether or not that person appears in the proceedings;—and an order made under subsection (1) of this section shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.
- (5) Where there is more than one person interested in a copy or other object, the court may direct that the object be sold, or otherwise dealt with, and the proceeds divided, and shall make any other order as it thinks just.
- (6) If the court decides that no order should be made under this section, the person in whose possession, custody, or control the copy or other object was before being delivered up is entitled to its return.

Cf. Copyright, Designs and Patents Act 1988, s. 114 (U.K.); 1962, No. 33, s. 28 (4)

PART VII BORDER PROTECTION MEASURES

135. Definitions—

In this Part of this Act, unless the context otherwise requires,—

“Claimant” means a person who gives a notice under section 136 (1) of this Act:

“Collector” has the same meaning as it has in section 2 (1) of the Customs Act 1966:

“Comptroller” has the same meaning as it has in section 2 (1) of the Customs Act 1966:

“Control of the Customs” has the same meaning as it has in section 16 of the Customs Act 1966:

“Court” means the High Court:

“Officer of Customs” has the same meaning as it has in section 2 (1) of the Customs Act 1966:

“Pirated copy”—

- (a) Means any copy of a copyright work that is a literary, dramatic, musical, or artistic work or the typographical arrangement of a published edition or a sound recording or a film, where the copy is made—
 - (i) Directly or indirectly from the copyright work; and
 - (ii) Without the licence of the person who owns, in the country where the copy is made, the copyright in the work; and
 - (iii) In circumstances in which the making of the copy would, if it had been done in New Zealand, have constituted an infringement of copyright under this Act; and
- (b) Includes any illicit recording within the meaning of section 169 of this Act, including any illicit recording that is a copyright work sold in a country other than New Zealand by or with the licence of the owner of the copyright in the work in that country; but
- (c) Does not include—

- (i) Any other copyright work sold in a country other than New Zealand by or with the licence of the owner of the copyright in the work in that country; or
- (ii) Any copyright work in transit to a country other than New Zealand.

136. Notice may be given to Comptroller of Customs—

(1) A person who owns the copyright in any literary, dramatic, musical, or artistic work, or the typographical arrangement of a published edition, or a sound recording, or a film may give a notice in writing to the Comptroller—

- (a) Claiming that an item is a work in which the person owns the copyright; and
 - (b) Requesting the Comptroller to detain any pirated copies of the item that are in, or at any time come into, the control of the Customs.
- (2) A notice under subsection (1) of this section shall—
- (a) Contain such particulars in support of the claim that the item is a pirated copy as may be prescribed in regulations made under this Act; and
 - (b) Specify the period for which the notice is to be in force, which period shall be—
 - (i) Not longer than 5 years from the date of the notice; or
 - (ii) If copyright in the work to which the notice relates will expire within the period of 5 years from the date of the notice, not longer than the period for which copyright will last.
 - (3) The Comptroller shall, in relation to any notice given under subsection (1) of this section,—
 - (a) Accept the notice if the claimant and the notice given by the claimant comply with the requirements of this section and any regulations made under this Act;
 - (b) Decline the notice if the claimant or the notice given by the claimant does not comply with the requirements of this section and any regulations made under this Act;—

and shall within a reasonable period of receiving the notice advise the claimant whether the notice has been accepted or declined.

(4) A notice accepted under subsection (3) (a) of this section remains in force for the period specified in the notice unless—

- (a) It is revoked by the claimant by notice in writing; or
- (b) The Court orders, in proceedings under section 141 (1) of this Act, that the notice be discharged.

Cf. 1962, No. 33, s. 29 (1), (2), (7); 1990, No. 71, s. 4

137. Determination whether item is pirated copy—

- (1) Where—
 - (a) A notice that has been accepted under section 136 (3) (a) of this Act is in force; and
 - (b) A Collector forms the opinion that any item that has been imported and that is in the control of the Customs may be a pirated copy to which the notice relates,—

the Collector may conduct such investigation as he or she considers necessary in order to establish whether or not the item appears to be a pirated copy to which the notice relates.

(2) Where the Collector conducts an investigation, he or she may, subject to section 138 of this Act, require—

- (a) The claimant; or
- (b) Any other person appearing to the Collector to have an interest in the item—

to supply such information as the Collector may specify for the purpose of the investigation within 10 working days of being required to do so.

(3) Whether or not the Collector conducts any investigation, he or she shall, within a reasonable period of forming an opinion under subsection (1) of this section, make a determination whether or not the item appears to be a pirated copy to which the notice relates.

(4) Nothing in this section applies to an item that has been imported for private and domestic use.

138. Limitations on requirement to supply information—

(1) A Collector shall not require any person to supply any information under section 137 (2) of this Act unless the Collector believes that the information is reasonably necessary for the purposes of an investigation under section 137 (1) of this Act.

(2) Every person who is required to supply information to a Collector under section 137 (2) of this Act shall have the same privileges in relation to the giving of the information as witnesses have in any court.

(3) Where any person refuses or fails to supply information required by a Collector under section 137 (2) of this Act, the Collector may, subject to subsection (2) of this section, take that refusal or failure into account in forming any opinion under section 137 (1) of this Act or in making any determination under section 137 (3) of this Act.

139. Notice of determination—

(1) A Collector who makes a determination under section 137 (3) of this Act shall cause written notice of the determination to be served on—

- (a) The claimant; and
- (b) Any other person appearing to the Collector to have an interest in the item—

within such period as may reasonably be necessary to effect service.

(2) Every notice required to be served on the claimant or other person under subsection (1) of this section may be given to the claimant or other person—

- (a) By personal delivery to the claimant or other person; or
- (b) By posting it to the last known address of the claimant or other person, in which case it shall be deemed to have been served on the claimant or other person at the time at which it would have been delivered in the ordinary course of post; and in proving posting—
 - (i) It shall be sufficient to prove that the notice was properly addressed; and
 - (ii) It shall be presumed, in the absence of proof to the contrary, that the notice was posted on the day on which it was dated; or
- (c) By sending it by facsimile to the last known facsimile number of the claimant or other person, in which case it shall, in the absence of proof to the contrary, be deemed to have been served on the claimant or other person on the day after the day on which it was sent; and, in proving sending, it shall be sufficient to prove that a facsimile machine generated a record of the transmission of the notice to such facsimile number.

(3) The detention of any item under section 140 of this Act is not rendered illegal by a failure to serve notice under subsection (1) of this section.

140. Detention of pirated copy—

(1) Where a Collector has formed an opinion that an item that has been imported and that is in the control of the Customs may be a pirated copy to which a notice accepted under section 136 (3) (a) of this Act relates, that item shall be detained in the custody of the Comptroller or any Collector or any officer of Customs until—

- (a) The Comptroller or any Collector is served with an order made in proceedings under section 141 (1) of this Act that the notice be discharged; or
- (b) The Comptroller or any Collector is served with an order made in proceedings under section 141 (2) of this Act that the item be released; or
- (c) Any proceedings under section 141 (3) of this Act in respect of that item (including any appeal) are determined by a decision that the item is not a pirated copy that has been imported other than for private and domestic use; or
- (d) Any proceedings under section 141 (3) of this Act in respect of that item, including any appeal, are abandoned; or
- (e) Ten working days have elapsed since notice was served under section 139 of this Act and neither the Comptroller nor a Collector has been served with notice of proceedings brought under section 141 (3) of this Act by a person other than the importer or consignee;—

whereupon the item shall, subject to subsection (3) of this section, be released to the person entitled to it.

(2) The Comptroller or any Collector may in any particular case extend the period referred to in subsection (1) (e) of this section to 20 working days if he or she considers it appropriate to do so in all the circumstances.

(3) The Comptroller or any Collector or any officer of Customs shall not release any item under subsection (1) of this section unless—

- (a) Any other legal requirements as to importation of the item are satisfied; and
- (b) Any requirements made pursuant to any regulations made under this Act requiring the deposit of a security have been satisfied; and
- (c) The release of the item is not otherwise contrary to law.

141. Proceedings—

(1) Any person may apply to the Court for an order that a notice accepted under section 136 (3) (a) of this Act be discharged, and the Court may make such an order accordingly.

(2) Any person may apply to the Court for an order that an item detained under section 140 of this Act be released, and the Court may make such an order accordingly.

(3) Any person may apply to the Court for a decision on whether or not an item the subject of a determination made under section 137 (3) of this Act is a pirated copy that has been imported other than for private and domestic use, and the Court shall make such a decision accordingly.

(4) Notice of proceedings under subsection (3) of this section shall be served on the Comptroller or any Collector.

(5) In proceedings under subsection (3) of this section, the Court shall issue directions as to the service of notice on persons having an interest in the item that is the subject of proceedings, and any such person is entitled—

- (a) To appear in those proceedings, whether or not that person was served with notice under section 139 of this Act; and
- (b) To appeal against any order made in those proceedings, whether or not that person appeared in the proceedings.

(6) No order made in proceedings under subsection (3) of this section shall 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.

142. Powers of Court—

(1) Where, in proceedings under section 141 (3) of this Act, the Court decides that an item the subject of a determination made under section 137 (3) of this Act is a pirated copy that has been imported other than for private and domestic use, the Court shall make an order that the item be—

- (a) Forfeited to the claimant; or
- (b) Destroyed; or
- (c) Otherwise dealt with as the Court thinks fit.

(2) In considering what order should be made under subsection (1) of this section, the Court shall have regard to—

- (a) Whether other remedies available in proceedings for infringement of copyright would be adequate to compensate the claimant and to protect that person's interests; and
- (b) The need to ensure that no pirated copy is disposed of in a manner that would adversely affect the claimant.

(3) Where more than one person is interested in an item, the Court may direct that the item be sold, or otherwise dealt with, and the proceeds divided, and shall make any other order as it thinks just.

(4) Where, in proceedings under section 141 (3) of this Act, the Court decides that an item the subject of a determination made under section 141 (3) of this Act is not a pirated copy that has been imported other than for private and domestic use, the Court may make an order that any person who is a party to the proceedings pay compensation in such amount as the Court thinks fit to the importer, consignee, or owner of the item.

143. Inspection of item—

(1) The Comptroller or a Collector or an officer of Customs shall, in respect of any item in his or her possession that is or may be the subject of—

- (a) A notice given under section 136 (1) of this Act; or
- (b) An investigation under section 137 of this Act; or
- (c) Proceedings under section 141 of this Act,—

allow any person claiming to have an interest in—

- (d) The item; or
- (e) Any investigation under section 137 of this Act, or any proceedings under section 141 of this Act, in relation to the item—

to inspect that item.

(2) A person referred to in subsection (1) of this section may—

- (a) Inspect the item during normal office hours; or
- (b) With the approval of the Comptroller or a Collector or an officer of Customs, remove the item or an example of the item to such place, for such period, and on such conditions as the Comptroller or Collector or officer may specify, for the purpose of inspecting it.

(3) Any person who intends to inspect any item under this section shall give the Comptroller or Collector or officer of Customs not less than 72 hours' notice of his or her intention to inspect that item.

144. Notice of parallel import may be given to Comptroller of Customs—

(1) Any person who owns the copyright in any literary, dramatic, musical, or artistic work, or the typographical arrangement of a published edition, or a sound recording, or a film, may give a notice in writing to the Comptroller—

- (a) Claiming—
 - (i) That an object specified in the notice is an infringing copy under section 12 (3) of this Act; and
 - (ii) That the person is the person whose copyright would be infringed by the importation of the object; and
- (b) Requesting the Comptroller to inform the person—
 - (i) If the Comptroller becomes aware that any such object is intended to be imported into New Zealand; or
 - (ii) If any such object is in, or at any time comes into, the control of the Customs.

(2) A notice under subsection (1) of this section shall—

- (a) Contain such particulars in support of the claims referred to in subsection (1) (a) of this section as may be required in a form approved by the Comptroller; and
 - (b) Specify the period for which the notice is to be in force, which period shall be—
 - (i) Not longer than 5 years from the date of the notice; or
 - (ii) If copyright in the work to which the notice relates will expire within the period of 5 years from the date of the notice, not longer than the period for which copyright will last; and
 - (c) Be accompanied by the prescribed fee.
- (3) The Comptroller shall, in relation to any notice given under subsection (1) of this section,—
- (a) Accept the notice if the person and the notice given by the person comply with the requirements of this section:

- (b) Decline the notice if the person or the notice given by the person does not comply with the requirements of this section;

and shall within a reasonable period of receiving the notice advise the claimant whether the notice has been accepted or declined.

(4) A notice accepted under subsection (3) (a) of this section remains in force for the period specified in the notice unless—

- (a) It is revoked by the person by notice in writing; or
(b) The Court orders in any proceedings under Part VI of this Act that the notice be discharged.
(5) This section shall come into force on the 1st day of April 1995.

145. Delegation of powers, duties, and functions—

(1) With the written consent of the Minister of Customs, the Comptroller may from time to time, either generally or particularly, by writing under his or her hand, delegate to any officer of Customs all or any of the powers, duties, and functions conferred or imposed on the Comptroller by or under this Part of this Act.

(2) With the written consent of the Comptroller, a Collector may from time to time, either generally or particularly, by writing under his or her hand, delegate to any officer of Customs all or any of the powers, duties, and functions conferred or imposed on the Collector by or under this Part of this Act.

(3) No delegation under subsection (1) or subsection (2) of this section shall include the power to delegate under either of those subsections.

(4) Subject to any general or special directions given or conditions imposed from time to time by the Minister of Customs or the Comptroller or a Collector, as the case may be, the officer to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on that officer directly by this Act and not by delegation.

(5) Every officer of Customs purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(6) Any delegation under this section may be made to any specified person or to the holder or holders for the time being of any specified office or class of offices.

(7) Every such delegation, whether by the Comptroller or a Collector, shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Comptroller or a Collector.

(8) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Comptroller or Collector by whom it was made has ceased to hold office, and shall continue to have effect as if made by the successor in office of that Comptroller or Collector.

Cf. 1966, No. 19, s. 9; 1983, No. 41, s. 3

146. Protection of persons acting under authority of Act—

Neither the Crown nor the Comptroller nor any Collector nor any officer of Customs shall be liable for any loss or damage occasioned by anything done or omitted to be done or purporting to have been done in the exercise of any power, duty, or function under this Part of this Act or any regulations made under this Act for the purposes of this Part of this Act, unless the Comptroller or any Collector or any officer of Customs has not acted in good faith.

Cf. 1966, No. 19, s. 228A; 1971, No. 42, s. 10

PART VIII COPYRIGHT LICENSING

147. Works of more than one author—

(1) References in this Part of this Act to licences or licensing schemes covering works of more than one author do not include licences or licensing schemes covering only—

- (a) A single collective work or collective works of which the authors are the same; or

(b) Works made by or by employees of, or commissioned by, a single individual, firm, company, or group of companies.

(2) For the purposes of subsection (1) of this section, a group of companies means a holding company and its subsidiaries within the meaning of sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be.

Cf. Copyright, Designs and Patents Act 1988, s. 116 (4) (U.K.)

References and Applications with respect to Licensing Schemes

148. Licensing schemes to which sections 149 to 155 apply—

Sections 149 to 155 of this Act apply to—

- (a) Licensing schemes that—
 - (i) Are operated by licensing bodies; and
 - (ii) Relate to copyright in literary, dramatic, musical, or artistic works, or films, or film soundtracks when accompanying a film; and
 - (iii) Cover works of more than one author; and
 - (iv) Relate to licences for copying the work or performing, showing, or playing the work in public or broadcasting the work or including the work in a cable programme:
- (b) All licensing schemes in relation to copyright in sound recordings (other than film sound-tracks when accompanying a film), broadcasts, or cable programmes, or the typographical arrangement of published editions:
- (c) All licensing schemes that—
 - (i) Relate to copyright in computer programs, sound recordings, or films; and
 - (ii) Relate to licences for the rental of copies of works of those descriptions to the public:
- (d) All licensing schemes that authorise—
 - (i) Copying of literary, dramatic, musical, or artistic works or the typographical arrangements of published editions by or on behalf of educational establishments; or
 - (ii) Copying in the circumstances set out in section 45 (4) of this Act; or
 - (iii) Recording in the circumstances set out in sections 48 (1) and 91 (2) of this Act; or
 - (iv) The inclusion in a cable programme service of a broadcast made from a place in New Zealand by reception and immediate retransmission;—

and in those sections the term “licensing scheme” means a licensing scheme of any of those descriptions.

Cf. Copyright, Designs and Patents Act 1988, s. 117 (U.K.)

References with respect to Licensing Schemes

149. Reference of proposed licensing scheme to Tribunal—

- (1) The terms of a licensing scheme that—
 - (a) Is proposed to be operated by a licensing body; and
 - (b) Is proposed to apply generally or in relation to any description of cases—

may be referred to the Tribunal by—

- (c) The operator of the proposed scheme; or
- (d) An organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply.

(2) The Tribunal shall first decide whether to entertain the reference and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference, it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases

of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

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

Cf. Copyright, Designs and Patents Act 1988, s. 118 (U.K.)

150. Reference of licensing scheme to Tribunal—

(1) If, while a licensing scheme is in operation, a dispute arises between the operator of the scheme and—

(a) A person claiming that he or she requires a licence in a case of a description to which the scheme applies; or

(b) An organisation claiming to be representative of such persons,—

the operator or that person or organisation may refer the scheme, in so far as it relates to cases of that description, to the Tribunal.

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

(3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

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

Cf. Copyright, Designs and Patents Act 1988, s. 119 (U.K.); 1962, No. 33, s. 39 (1), (3)–(5) (a)

151. Further reference of scheme to Tribunal—

(1) Where the Tribunal has on a previous reference of a licensing scheme (whether under this section or section 149 or section 150 of this Act), made an order with respect to the scheme, then, subject to subsection (2) of this section, while the order remains in force,—

(a) The operator of the scheme; or

(b) A person claiming that he or she requires a licence in a case of the description to which the order applies; or

(c) An organisation claiming to be representative of such persons—

may again refer the scheme, so far as it relates to cases of that description, to the Tribunal.

(2) Except with the special leave of the Tribunal, a licensing scheme shall not be referred again to the Tribunal under subsection (1) of this section in respect of the same description of cases at a time earlier than—

(a) The end of the period of 12 months from the date of the order on the previous reference; or

(b) If the order was made so as to be in force for 15 months or less, the beginning of the period of 3 months immediately before the expiry of the order,—

whichever occurs first.

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

(4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying, or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

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

Cf. Copyright, Designs and Patents Act 1988, s. 120 (U.K.); 1962, No. 33, s. 40

152. Effect of order of Tribunal made on reference—

(1) A licensing scheme that has been confirmed or varied by an order of the Tribunal made under section 149 or section 150 or section 151 of this Act shall be in force or, as the case may be, remain in

operation so far as it relates to cases of the description in respect of which the order was made, so long as the order remains in force.

- (2) While an order is in force, a person who, in a case of a class to which the order applies,—
 - (a) Pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained; and
 - (b) Complies with the other terms applicable to such a licence under the scheme—

shall be in the same position as regards infringement of copyright as if that person had at all material times been the holder of a licence granted by the owner of the copyright in question accordance with the scheme.

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

- (4) If such a direction is made,—
 - (a) Any necessary repayments, or further payments, shall be made in respect of charges already paid; and
 - (b) The reference in subsection (2) (a) of this section to the charges payable under the scheme shall be construed as a reference to the charges so payable under the order.

Cf. Copyright, Designs and Patents Act 1988, s. 123 (1)–(3) (U.K.); 1962, No. 33, ss. 39 (5) (b), 45 (1)–(3)

Applications with respect to Licensing Schemes

153. Application for grant of licence in connection with licensing scheme—

(1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant to that person or procure the grant to that person of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Tribunal for a licence.

- (2) A person who claims, in a case excluded from a licensing scheme,—
 - (a) That the operator of the scheme has refused to grant to that person or procure the grant to that person of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted, or
 - (b) That the operator of the scheme proposes terms for a licence that are unreasonable—

may apply to the Tribunal.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of subsection (2) of this section if—

- (a) The scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or
- (b) The case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

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

Cf. Copyright, Designs and Patents Act 1988, s. 121 (U.K.); 1962, No. 33, ss. 36 (3), 38 (1)–(4)

154. Application for review of order as to entitlement to licence—

(1) Where the Tribunal has made an order under section 153 of this Act that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may from time to time apply to the Tribunal to review the order.

(2) Except with the special leave of the Tribunal, an application shall not be made under subsection (1) of this section at a time earlier than—

(a) The end of the period of 12 months from the date of the order, or of the decision on a previous application under this section; or

(b) If the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, the beginning of the period of 3 months immediately before the expiry date,—
whichever occurs first.

(3) The Tribunal shall on an application for review under this section confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

Cf. Copyright, Designs and Patents Act 1988, s. 122 (U.K.)

155. Effect of order of Tribunal made on application—

Where the Tribunal has made an order under section 153 of this Act and the order remains in force, the person in whose favour the order is made shall, if that person—

- (a) Pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained; and
- (b) Complies with the other terms specified in the order, be in the same position as regards infringement of copyright as if that person had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

Cf. Copyright, Designs and Patents Act 1988, s. 123 (5) (U.K.); 1962, No. 33, s. 45 (1)–(3)

References and Applications with respect to Licensing by Licensing Bodies

156. Licences to which sections 157 to 160 apply—

Sections 157 to 160 of this Act apply to the following descriptions of licences granted by a licensing body otherwise than under a licensing scheme:

- (a) Licences that—
 - (i) Relate to copyright in literary, dramatic, musical, or artistic works, or films, or film sound-tracks when accompanying a film; and
 - (ii) Cover works of more than one author; and
 - (iii) Authorise the copying of the work or the performance, showing, or playing of the work in public or the broadcasting of the work or the inclusion of the work in a cable programme:
- (b) Any licence relating to copyright in a sound recording (other than a film sound-track when accompanying a film), broadcast, or cable programme, or the typographical arrangement of a published edition:
- (c) All licences relating to copyright in computer programs, sound recordings, or films, so far as the licences relate to the rental of copies to the public:
- (d) Licences that authorise the copying of literary, dramatic, musical, or artistic works or the typographical arrangements of published editions by or on behalf of educational establishments;—

and in those sections the term “licence” means a licence of any of those descriptions.

Cf. Copyright, Designs and Patents Act 1988, s. 124 (U.K.)

157. Reference to Tribunal of proposed licence—

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

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference, it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.

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

Cf. Copyright, Designs and Patents Act 1988, s. 125 (U.K.)

158. Reference to Tribunal of expiring licence—

(1) A licensee under a licence that is due to expire, either by effluxion of time or as a result of notice given by the licensing body, may refer the licence to the Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such a reference may not be made earlier than the beginning of the period of 3 months immediately before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

(4) If the Tribunal finds the reference well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.

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

Cf. Copyright, Designs and Patents Act 1988, s. 126 (U.K.)

159. Application for review of order as to licence—

(1) Where the Tribunal has made an order under section 157 or section 158 of this Act, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review the order.

(2) Except with the special leave of the Tribunal, an application shall not be made under subsection (1) of this section at a time earlier than—

(a) The end of the period of 12 months from the date of the order or of the decision on a previous application under this section; or

(b) If the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, the beginning of the period of 3 months immediately before the expiry date,—

whichever occurs first.

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

Cf. Copyright, Designs and Patents Act 1988, s. 127 (U.K.)

160. Effect of order of Tribunal as to licence—

(1) Where the Tribunal has made an order under section 157 or section 158 of this Act and the order remains in force, the person entitled to the benefit of the order shall, if that person—

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

(b) Complies with the other terms specified in the order,—

be in the same position as regards infringement of copyright as if that person had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

(2) The benefit of the order may be assigned,—

(a) In the case of an order made under section 157 of this Act, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) In the case of an order made under section 158 of this Act, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order made under section 157 or section 158 of this Act, or an order made under section 159 of this Act varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which the order is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

(4) If such a direction is made,—

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

(b) The reference in subsection (1) (a) of this section to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable under the later order.

Cf. Copyright, Designs and Patents Act 1988, s. 128 (U.K.)

Factors to be Taken into Account in Certain Classes of Cases

161. Unreasonable discrimination—

In determining what is reasonable on a reference or application under this Part of this Act relating to a licensing scheme or licence, the Tribunal shall have regard to—

(a) The availability of other schemes, or the granting of other licences, to other persons in similar circumstances; and

(b) The terms of those schemes or licences;—

and shall exercise its powers so as to ensure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

Cf. Copyright, Designs and Patents Act 1988, s. 129 (U.K.)

162. Licences for reprographic copying—

Where a reference or application is made under this Part of this Act relating to the licensing of reprographic copying of published literary, dramatic, musical, or artistic works, or the typographical arrangements of published editions, the Tribunal shall have regard to—

(a) The extent to which published editions of the works in question are otherwise available; and

(b) The proportion of the work to be copied; and

(c) The nature of the use to which the copies are likely to be put.

Cf. Copyright, Designs and Patents Act 1988, s. 130 (U.K.)

163. Licences for educational establishments in respect of works included in broadcasts or cable programmes—

(1) This section applies to references or applications may under this Part of this Act in relation to licences for—

(a) The recording, by or on behalf of educational establishments, of broadcasts or cable programmes that include copyright works; or

(b) The making of copies of such recordings,—

for educational purposes.

(2) Where this section applies, the Tribunal shall, in considering what charges (if any) should be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

Cf. Copyright, Designs and Patents Act 1988, s. 131 (U.K.)

164. Licences to reflect conditions imposed by promoters of events—

(1) Where a reference or application is made under this Part of this Act in respect of a licence relating to a sound recording, film, broadcast, or cable programme that includes, or is to include, any entertainment or other event, the Tribunal—

- (a) Shall have regard to any conditions imposed by the promoters of the entertainment or other event; and
- (b) Shall not hold a refusal or failure to grant a licence to be unreasonable if the licence could not have been granted consistently with any such conditions.

(2) Nothing in this section shall require the Tribunal to have regard to any such conditions in so far as they—

- (a) Purport to regulate the charges to be imposed in respect of the grant of licences; or
- (b) Relate to payments to be made to the promoters of any entertainment or other event in consideration of the grant of facilities for making the recording, film, broadcast, or cable programme.

Cf. Copyright, Designs and Patents Act 1988, s. 132 (U.K.)

165. Licences to reflect payments in respect of underlying rights—

(1) In considering what charges (if any) should be paid for a licence on a reference or application made under this Part of this Act in relation to licences for the rental to the public of copies of computer programs, sound recordings, or films, the Tribunal shall take into account any reasonable payments that the owner of copyright in the computer program, sound recording, or film is liable to make, in consequence of the granting of the licence or of the acts authorised by the license, to owners of copyright in works included in the program, recording, or film.

(2) On any reference or application made under this Part of this Act in relation to licensing in respect of copyright in sound recordings, films, broadcasts, or cable programmes, the Tribunal shall take into account, in considering what charges (if any) should be paid for a license, any reasonable payments that the copyright owner is liable to make, in consequence of the granting of the licence or of the acts authorised by the licence, in respect of any performance included in the recording, film, broadcast, or cable programme.

Cf. Copyright, Designs and Patents Act 1988, s. 133 (U.K.)

166. Licences in respect of works included in retransmissions—

(1) This section applies to references or applications made under this Part of this Act in relation to licences to include in a broadcast or cable programme—

- (a) Literary, dramatic, musical, or artistic works; or
- (b) Sound recordings or films,

where one broadcast or cable programme (in this section referred to as “the first transmission”) is, by reception and immediate retransmission, to be further broadcast or included in a cable programme (in this section referred to as “the further transmission”).

(2) So far as the further transmission is to the same area as the first transmission, the Tribunal shall, in considering what charges (if any) should be paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission that adequately remunerates the copyright owner in respect of transmissions to that area.

(3) So far as the further transmission is to an area outside that to which the first transmission is made, the Tribunal shall not take the further transmission into account in considering what charges (if any) should be paid for licences for the first transmission.

Cf. Copyright, Designs and Patents Act 1988, s. 134 (U.K.)

*Implied Indemnity in Schemes or Licences
for Reprographic Copying*

167. Implied indemnity in certain schemes and licences for reprographic copying—

- (1) This section applies to—
 - (a) Schemes for licensing reprographic copying of published literary, dramatic, musical, or artistic works, or the typographical arrangements of published editions; and
 - (b) Licences granted by licensing bodies for such copying,—

where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.

- (2) There is implied—
 - (a) In every scheme to which this section applies an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme; and
 - (b) In every licence to which this section applies an undertaking by the licensing body to indemnify the licensee—

against any liability incurred by the licensee by reason of the licensee having infringed copyright by making or authorising the making of reprographic copies of a work in circumstances within the apparent scope of the licence.

- (3) For the purposes of this section, the circumstances of a case are within the apparent scope of a licence if—
 - (a) It is not apparent from inspection of the licence and the work in question that the work does not fall within the description of works to which the licence applies; and
 - (b) The licence does not expressly provide that it does not extend to copyright of the description infringed.
- (4) In this section, the term “liability” includes liability to pay costs; and this section applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against the licensee for infringement of copyright and to sums that the licensee is liable to pay in respect of such infringement.
- (5) A scheme or licence to which this section applies may contain reasonable provision—
 - (a) With respect to the manner in which, and time within which, claims under the undertaking implied by this section are to be made:
 - (b) Enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of any proceedings affecting the amount of the operator’s or, as the case may be, the licensing body’s liability to indemnify under such an undertaking.

Cf. Copyright, Designs and Patents Act 1988, s. 136 (U.K.)

168. Determination of equitable remuneration—

- (1) Where—
 - (a) A copyright owner and a librarian cannot agree as to the remuneration to be paid to the copyright owner under section 54 (2) (d) of this Act; or
 - (b) A copyright owner and the Crown cannot agree as to the remuneration to be paid to the copyright owner under section 63 (2) of this Act; or
 - (c) An exclusive licensee and the Crown cannot agree as to the remuneration to be paid to the exclusive licensee under section 64 (2) of this Act; or
 - (d) A licensee and the copyright owner or the exclusive licensee, as the case may be, cannot agree on the part of the payment to be paid to the licensee under section 64 (3) of this Act; or
 - (e) A copyright owner and a person who makes a recording of a broadcast or cable programme cannot agree as to the remuneration to be paid to the copyright owner under section 91 (2) (d) of this Act,—

either party may apply to the Tribunal to determine the remuneration to be paid.

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

- (3) Either party to an order made under this section may apply to the Tribunal to review its order.

(4) Except with the special leave of the Tribunal, an application under subsection (3) of this section shall not be made earlier than the end of the period of 12 months from the date of the original order or of the order on a previous application under that subsection.

(5) The Tribunal shall on an application for review under this section confirm or vary its original order as the Tribunal may determine to be reasonable in the circumstances of the case.

(6) An order under subsection (5) of this section has effect from the date on which it is made or such later date as may be specified by the Tribunal.

PART IX PERFORMERS' RIGHTS

169. Interpretations—

In this Part of this Act, unless the context otherwise requires,—

“Commercial exploitation” means—

- (a) Issuing recordings or copies of recordings to the public; or
- (b) Playing recordings or copies of recordings in public; or
- (c) Showing recordings or copies of recordings in public; or
- (d) Broadcasting recordings or copies of recordings, or including recordings or copies of recordings in a cable programme service:

“Convention country” means a country that is a party to a convention or other international instrument relating to performers' rights to which New Zealand is also a party:

“Copy”, in relation to a recording,—

- (a) Means a copy of a recording made directly from that recording; and
- (b) Includes a copy of a recording made indirectly from that recording:

“Exclusive recording contract” means a contract between a performer and another person under which that person is entitled, to the exclusion of all other persons (including the performer), to make recordings or copies of recordings for the purposes of commercial exploitation:

“Illicit recording”—

- (a) Means a recording of the whole or any substantial part of a performance made without the performer's consent and otherwise than for private and domestic use; and
- (b) Includes a copy, made without the performer's consent and otherwise than for private and domestic use, of a recording where—
 - (i) The recording was made without the performer's consent; or
 - (ii) The copy is made for purposes different from those for which the performer gave his or her consent to the recording; or
 - (iii) The recording was made in accordance with any of the exemptions contained in sections 175 to 179 or sections 181 to 191 of this Act, and the copy is made for different purposes:

“Performance”—

- (a) Means—
 - (i) A dramatic performance, including a dance, a mime, and a performance given with the use of puppets; or
 - (ii) A musical performance; or
 - (iii) A reading or recitation of a literary work; or
 - (iv) A performance of a variety act or any similar presentation,—

being in each case either—

- (v) A live performance given in any country by a New Zealand citizen or a person domiciled or resident in New Zealand, or by a citizen or subject of or a person domiciled or resident in a Convention country; or
 - (vi) A live performance given in New Zealand or a Convention country; or
 - (vii) A performance to which this Part of this Act applies pursuant to section 170 (2) or section 203 of this Act or pursuant to an Order in Council made under section 204 of this Act; but
- (b) Does not include—
- (i) A performance referred to in section 47 (1) of this Act; or
 - (ii) A reading, recital, or delivery of any item of news and information; or
 - (iii) A performance of a sporting activity; or
 - (iv) Participation in a performance as a member of an audience:

“Person having recording rights” includes—

- (a) Any person who is a party to, and has the benefit of, an exclusive recording contract to which the performance is subject; or
- (b) Any person to whom the benefit of an exclusive recording contract has been assigned; or
- (c) Any person who is authorised to make recordings or copies of recordings for the purposes of commercial exploitation by a person to whom paragraph (a) or paragraph (b) of this definition applies:

“Recording”, in relation to a performance, means a sound recording or film—

- (a) Made directly from the performance; or
- (b) Made from a broadcast of, or a cable programme that includes, the performance.

Cf. Copyright, Designs and Patents Act 1988, s. 180 (2) (U.K.); Copyright Act 1968, s. 248A (2) (Aust.)

170. Application—

(1) This Part of this Act applies to any act done on or after the commencement of this Act in relation to a performance given on or after that commencement.

(2) Notwithstanding subsection (1) of this section, where the performance was given—

- (a) In New Zealand; or
- (b) In a Convention country in respect of which section 203 of this Act applies this Part of this Act; or
- (c) In a Convention country in respect of which an Order in Council made under section 204 of this Act is in force; or
- (d) In any country by a New Zealand citizen or a person domiciled or resident in New Zealand, or by a citizen or subject of or a person domiciled or resident in a Convention country,—

this Part of this Act also applies in relation to a performance given before the commencement of this Act if—

- (e) A period of not more than 50 years has elapsed from the end of the calendar year in which the performance was given; or
- (f) In the case of a performance given in a Convention country, or in another country by a citizen or subject of or a person domiciled or resident in a Convention country, any term of protection given to that performance in the Convention country has not already expired.

(3) Notwithstanding that, by virtue of subsection (2) of this section, this Part of this Act applies to a performance given before the commencement of this Act, nothing in this Part of this Act applies to—

- (a) Any act done, in relation to that performance, before the commencement of this Act or in pursuance of arrangements made before the commencement of this Act; or

- (b) The sale, letting for hire, or offer or exposure for sale or hire, after the commencement of this Act, of any recording or copy of a recording in existence in New Zealand immediately before the commencement of this Act.
 - (4) The rights conferred by this Part of this Act are independent of—
 - (a) Any copyright in, or moral rights relating to, any work performed or any sound recording or film of, or broadcast or cable programme that includes, the performance; and
 - (b) Any other right or obligation arising otherwise than under this Part of this Act.
 - (5) The rights conferred by this Part of this Act on a performer are conferred only in relation to performances by that performer, whether alone or with others.
- Cf. Copyright, Designs and Patents Act 1988, s. 180 (3), (4) (U.K.)

Performers, Rights

171. Consent required for recording or live transmission of performance—

- (1) A performer's rights are infringed by a person who, without the performer's consent,—
 - (a) Makes, otherwise than for his or her private and domestic use, a recording of the whole or any substantial part of a performance; or
 - (b) Broadcasts live, or includes live in a cable programme, the whole or any substantial part of a performance.
- (2) In proceedings for infringement of a performer's rights brought under this section, damages shall not be awarded against a defendant who shows that at the time of the infringement the defendant believed on reasonable grounds that the performer's consent had been given.

Cf. Copyright, Designs and Patents Act 1988, s. 182 (U.K.)

172. Infringement by use of illicit recording—

A performer's rights are infringed by a person who, without the performer's consent,—

- (a) Shows in public or plays in public the whole or any substantial part of a performance; or
- (b) Broadcasts or includes in a cable programme the whole or any substantial part of a performance—

by means of a recording that is, and that the person knows or has reason to believe is, an illicit recording.

Cf. Copyright, Designs and Patents Act 1988, s. 183 (U.K.)

173. Copying of recordings—

- (1) A performer's rights are infringed by a person who, without the performer's consent and otherwise than for that person's private and domestic use, copies a recording if the person knows or has reason to believe that the recording was made without the performer's consent.
- (2) In proceedings for infringement of a performer's rights brought under this section, damages shall not be awarded against a defendant who shows that at the time of the infringement the defendant believed on reasonable grounds that the performer's consent to the recording had been given.
- (3) A performer's rights are infringed by a person who, without the performer's consent and otherwise than for that person's private and domestic use, copies a recording—
 - (a) If the copy is made for purposes different from those for which the performer gave his or her consent to the recording; or
 - (b) If the recording was made in accordance with any of the exemptions contained in any of sections 175 to 179 or sections 181 to 191 of this Act and the copy is made for different purposes.
- (4) In proceedings for infringement of a performer's rights brought under this section, damages shall not be awarded against a defendant who shows that at the time of the infringement the defendant believed on reasonable grounds that the performer's consent to the copying of the recording had been given.

174. Infringement by importing, possessing, or dealing with illicit recording—

- (1) A performer's rights are infringed by a person who, without the performer's consent,—
 - (a) Imports into New Zealand otherwise than for that person's private and domestic use; or
 - (b) In the course of a business, possesses, sells, lets for hire, offers or exposes for sale or hire, or distributes—

a recording that is, and that the person knows or has reason to believe is, an illicit recording.

(2) Where, in proceedings for infringement of a performer's rights brought under this section, a defendant shows that the recording was innocently acquired by the defendant or a predecessor in title of the defendant, the only remedy available against the defendant in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2) of this section, the term "innocently acquired" means that the person acquiring the recording did not know, and had no reason to believe, that it was an illicit recording.

Cf. Copyright, Designs and Patents Act 1988, s. 184 (U.K.)

Acts Permitted in relation to Performances

175. Incidental copying of performance or recording—

- (1) The rights conferred by this Part of this Act are not infringed by—
 - (a) The incidental copying of a performance or recording in a sound recording, film, broadcast, or cable programme; or
 - (b) The playing of a sound recording, the showing of a film, the making of a broadcast, or the inclusion of a cable programme in a cable programme service, where the performance or recording has been incidentally copied in that sound recording, film, broadcast, or programme; or
 - (c) The issue to the public of copies of such a sound recording, film, broadcast, or cable programme.
- (2) For the purposes of this section, a performance or recording, so far as it consists of—
 - (a) Music; or
 - (b) Words spoken or sung with music,—

shall not be regarded as incidentally copied in another work if the performance or recording is deliberately copied.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 3 (U.K.)

176. Permitted acts in relation to performances, criticism, reviews, and news reporting—

Fair dealing with a performance or recording—

- (a) For the purposes of criticism or review, of that or another performance or recording, or of a work; or
- (b) For the purposes of reporting current events does not infringe any of the rights conferred by this Part of this Act.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 2 (U.K.)

177. Things done for purposes of instruction or examination—

(1) The rights conferred by this Part of this Act are not infringed by the copying of a recording of a performance if—

- (a) The copying is done—
 - (i) In the course of preparation for instruction; or
 - (ii) For use in the course of instruction; or
 - (iii) In the course of instruction; or
 - (iv) After the course of instruction—

where the lesson is on how to make films or film sound-tracks or relates to the learning of a language or is conducted by correspondence; and

- (b) The copying is done by or on behalf of a person who is to give, is giving, or has given the lesson or by or on behalf of a person who is to receive, is receiving, or has received the lesson; and
- (c) No charge is made for the supply of a copy to any student or other person who is to receive, is receiving, or has received the lesson.
- (2) The rights conferred by this Part of this Act are not infringed—
 - (a) By the copying of a recording of a performance for the purposes of setting or answering the questions in an examination; or
 - (b) By anything done for the purposes of an examination by way of communicating the questions to the candidates.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 4 (1), (2) (U.K.)

178. Playing or showing sound recording, film, broadcast, or cable programme at educational establishment—

(1) The playing or showing of a sound recording, film, broadcast, or cable programme at an educational establishment for the purposes of instruction before an audience consisting of persons who are students or staff members at the establishment or persons directly connected with the activities of the establishment does not infringe any of the rights conferred by this Part of this Act.

(2) For the purposes of this section, a person shall not be treated as a person directly connected with the activities of an educational establishment by reason only that the person is a parent or guardian of a student at that educational establishment.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 5 (U.K.)

179. Recording of broadcasts and cable programmes by educational establishments—

A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without infringing any of the rights conferred by this Part of this Act in relation to any performance or recording included in the recording or copy.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para 6 (1) (U.K.)

180. Subsequent dealings—

- (1) Where a recording, or a copy of a recording, that would otherwise be an illicit recording—
 - (a) Is made in accordance with section 177 or section 179 of this Act; and
 - (b) Is subsequently dealt with,—

it shall be treated as an illicit recording—

- (c) For the purposes of the dealing referred to in paragraph (b) of this subsection, unless that dealing is authorised by the performer; and
- (d) For the purposes of any dealing that is subsequent to the dealing referred to in paragraph (b) of this subsection, unless the first-mentioned dealing is authorised by the performer.

(2) In subsection (1) of this section, the term “dealt with” means sold or let for hire, or offered or exposed for sale or hire, in the course of a business.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, paras. 4 (3), 6 (2) (U.K.)

181. Parliamentary and judicial proceedings—

The rights conferred by this Part of this Act are not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purposes of reporting such proceedings.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 8 (U.K.)

182. Royal commissions and statutory inquiries—

The rights conferred by this Part of this Act are not infringed by anything done for the purposes of a Royal commission, a commission of inquiry, a ministerial inquiry, or a statutory inquiry.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 9 (U.K.)

183. Acts done under statutory authority—

(1) Where the doing of a particular act is specifically authorised by an enactment, the doing of that act does not infringe the rights conferred by this Part of this Act unless the enactment provides otherwise.

(2) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under or pursuant to any enactment.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 11 (U.K.)

184. Use of recordings of spoken works in certain cases—

(1) Where a recording of the reading or recitation of a literary work is made—

(a) For the purpose of reporting current events; or

(b) For the purpose of broadcasting, or including in a cable programme, the whole or part of the reading or recitation,—

it is not an infringement of the rights conferred by this Part of this Act to use the recording (or to copy the recording and use the copy) for that purpose, if the conditions contained in subsection (2) of this section are complied with.

(2) The conditions referred to in subsection (1) of this section are that—

(a) The recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme; and

(b) The making of the recording was not prohibited by or on behalf of the person giving the reading or recitation; and

(c) The use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and

(d) The use is by or with the authority of a person who is lawfully in possession of the recording.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 13 (U.K.)

185. Recordings of folk-songs—

(1) A recording of a performance of a song may be made for the purpose of including the song in an archive maintained by a body prescribed by regulations made under this Act without infringing any of the rights conferred by this Part of this Act, if the conditions in subsection (2) of this section are complied with.

(2) The conditions referred to in subsection (1) of this section are that—

(a) The words are unpublished and of unknown authorship at the time the recording is made; and

(b) The making of the recording does not infringe any copyright; and

(c) The making of the recording is not prohibited by any performer.

(3) Copies of a recording made in reliance on subsection (1) of this section and included in an archive maintained by a body prescribed by regulations made under this Act may, if the condition contained in subsection (4) of this section is complied with, be made and supplied by the archivist without infringing any of the rights conferred by this Part of this Act.

(4) The condition referred to in subsection (3) of this section is that no person is furnished with more than one copy of the same recording.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 14 (U.K.)

186. Playing of sound recordings for purposes of club, society, etc.—

(1) It is not an infringement of any right conferred by this Part of this Act to play a sound recording as part of the activities of, or for the benefit of, a club, society, or other organisation, if the conditions contained in subsection (2) of this section are complied with.

(2) The conditions referred to in subsection (1) of this section are—

(a) That the club, society, or organisation is not established or conducted for profit; and

(b) That the main objects of the club, society, or organisation are charitable or are otherwise concerned with the advancement of religion, education, or social welfare; and

- (c) That the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the club, society, or organisation.
Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 15 (U.K.)

187. Incidental recording for purposes of broadcast or cable programme—

- (1) A person who proposes to—
(a) Broadcast a recording of a performance; or
(b) Include a recording of a performance in a cable programme,—

in circumstances not infringing the rights conferred by this Part of this Act, shall be treated as having obtained consent for the purposes of this Part of this Act to the making of a recording for the purposes of the broadcast or cable programme.

(2) The consent referred to in subsection (1) of this section is subject to the conditions that the recording—

- (a) Shall not be used for any other purpose; and
(b) Shall be destroyed within 6 months of being first used for broadcasting the performance or, as the case may be, including the performance in a cable programme, unless the Minister has authorised the preservation of the recording in the records of a government department or in the National Archives because of its documentary character or exceptional importance.
(3) A recording made in accordance with this section shall be treated as an illicit recording—
(a) For the purposes of any use in breach of the condition contained in subsection (2) (a) of this section; and
(b) For all purposes after either of the conditions contained in subsection (2) of this section is broken.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 16 (U.K.)

188. Free public playing or showing of broadcast or cable programme—

(1) The playing in public or showing in public of a broadcast (other than a broadcast to which subsections (4) to (7) of this section apply) or cable programme to an audience who have not paid for admission to the place where the broadcast or cable programme is to be heard or seen does not infringe any right conferred by this Part of this Act in relation to a performance or recording included in—

- (a) The broadcast or cable programme; or
(b) Any sound recording or film that is played in public or shown in public by reception of the broadcast or cable programme.

(2) For the purposes of subsection (1) of this section, the audience shall be treated as having paid for admission to a place—

- (a) If they have paid for admission to a place of which that place forms part; or
(b) If goods or services are supplied at that place, or a place of which that place forms part,—
(i) At prices that are substantially attributable to the facilities afforded for hearing or seeing the broadcast or cable programme; or
(ii) At prices exceeding those usually charged there and that are partly attributable to those facilities; or
(c) If the place is a hotel, motel, camping ground, or any other place that admits persons for a fee for the purposes of obtaining accommodation of a temporary nature and they are persons residing at the hotel, motel, camping ground, or other place.

(3) For the purposes of subsection (1) of this section, the following persons shall not be treated as having paid for admission to a place:

- (a) Persons admitted as residents or inmates of a place (other than a hotel, motel, camping ground, or other place to which subsection (2) (c) of this section applies);
(b) Persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing broadcasts or cable programmes is only incidental to the main purposes of the club or society.

(4) Subsections (5) to (7) of this section apply in respect of the playing or showing of a broadcast—

- (a) That is made for reception in the area in which it is played or shown; and
- (b) That is not a satellite transmission or an encrypted transmission; and
- (c) That is shown or played simultaneously upon reception of the transmission of the broadcast.

(5) The playing in public or showing in public of a broadcast to which subsection (4) of this section applies to an audience who have not paid for admission to the place where the broadcast is to be heard or seen does not infringe any right conferred by this Part of this Act in relation to a performance or recording included in—

- (a) The broadcast; or
- (b) Any sound recording or film included in the broadcast.

(6) For the purposes of subsection (5) of this section, the audience shall be treated as having paid for admission to a place—

- (a) If they have paid for admission to a place of which that place forms part; or
- (b) If goods or services are supplied at that place, or a place of which that place forms part,—
 - (i) At prices that are substantially attributable to the facilities afforded for hearing or seeing the broadcast; or
 - (ii) At prices exceeding those usually charged there and that are partly attributable to those facilities.

(7) For the purposes of subsection (5) of this section, the following persons shall not be treated as having paid for admission to a place:

- (a) Persons admitted as residents or inmates of a place (including, without limitation, persons residing in a hotel, motel, camping ground, or any other place that admits persons for a fee for the purposes of obtaining accommodation of a temporary nature);
- (b) Persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing broadcasts or cable programmes is only incidental to the main purposes of the club or society.

(8) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the rights conferred by this Part of this Act in relation to a performance or recording, the fact that the broadcast or programme was heard or seen in public by the reception of the broadcast or cable programme shall be taken into account in assessing the damages for that infringement.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 18 (U.K.)

189. Reception and retransmission of broadcast in cable programme service—

(1) This section applies where a broadcast made from a place in New Zealand is, by reception and immediate retransmission, included in a cable programme service.

(2) Where this section applies,—

- (a) The rights conferred by this Part of this Act in relation to a performance or recording included in the broadcast are not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; and
- (b) Where the making of the broadcast was an infringement of any right conferred by this Part of this Act, the fact that the broadcast was retransmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 19 (U.K.)

190. Provision of subtitled copies of broadcast or cable programme—

(1) A body prescribed by regulations made under this Act may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in any other way, with copies that are subtitled or otherwise modified for their special needs, make recordings of television broadcasts or cable programmes without infringing any right conferred by this Part of this Act in relation to a performance or recording included in the broadcast or cable programme.

(2) A body shall not be prescribed for the purposes of subsection (1) of this section if it is established or conducted for profit.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 20 (U.K.)

191. Recording of broadcast or cable programme for archival purposes—

(1) A recording of a broadcast or cable programme of a class prescribed by regulations made under this Act, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a body prescribed by regulations made under this Act, without infringing any right conferred by this Part of this Act in relation to a performance or recording included in the broadcast or cable programme.

(2) A body shall not be prescribed for the purposes of subsection (1) of this section if it is established or conducted for profit.

Cf. Copyright, Designs and Patents Act 1988, Schedule 2, para. 21 (U.K.)

192. Power of Tribunal to give consent on behalf of performer—

(1) Where a person wishes to make a copy of a recording but—

(a) The consent of a performer to the making of such a copy is required; and

(b) Either—

(i) The identity or whereabouts of the performer cannot be ascertained by reasonable inquiry; or

(ii) The performer unreasonably withholds his or her consent,—

the person may apply to the Tribunal for consent to make the copy.

(2) The Tribunal may, subject to the provisions of this section, make an order giving consent to the making of the copy and may impose such conditions on the order as it thinks fit.

(3) The consent given by the Tribunal under subsection (2) of this section has effect as the consent of the performer for the purposes of the provisions of this Part of this Act relating to performers' rights.

(4) The Tribunal shall not give consent under subsection (2) of this section unless satisfied that such directions as to the service or publication of notices as the Tribunal may give have been complied with.

(5) The Tribunal shall not give consent under subsection (2) of this section unless satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interests of the performer; but it shall be for the performer to show what his or her reasons are for withholding consent, and in default of evidence as to his or her reasons the Tribunal may draw such inferences as it thinks fit.

(6) In any case the Tribunal shall take into account the following factors:

(a) Whether the recording of which the applicant seeks to make a copy was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the copy:

(b) Whether the making of the copy is consistent with the obligations of the parties to the arrangements under which the recording was made, or is otherwise consistent with the purposes for which the recording was made.

(7) Where the Tribunal gives consent under this section, it shall, in default of agreement between the applicant and the performer, make such order as it thinks fit as to the payment to be made to the performer in consideration of consent being given.

Cf. Copyright, Designs and Patents Act 1988, s. 190 (U.K.)

Duration and Transmission of Rights

193. Duration of rights—

The rights conferred by this Part of this Act exist in relation to a performance until the end of the period of 50 years from the end of the calendar year in which the performance takes place.

Cf. Copyright, Designs and Patents Act 1988, s. 191 (U.K.)

194. Transmission of rights—

- (1) The rights conferred by this Part of this Act are not assignable, and are transmissible only in accordance with the provisions of this section.
- (2) On the death of a person entitled to performers' rights,—
 - (a) The rights pass to such person or persons as he or she 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 or her personal representatives;—

and references in this Part of this Act to the performer, in the context of the person having performers' rights, shall be construed as references to the person for the time being entitled to exercise those rights.

(3) Where, under subsection (2) (a) of this section, a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.

(4) Any damages recovered by personal representatives pursuant to this section in respect of an infringement after a person's death shall devolve as part of his or her estate as if the right of action had existed and been vested in him or her immediately before his or her death.

Cf. Copyright, Designs and Patents Act 1988, s. 192 (U.K.)

Consent

195. Consent—

(1) Consent for the purposes of this Part of this Act may be given in relation to a specific performance, a specified description of performances, or performances generally, and may relate to past or future performances.

(2) Where a right conferred by this Part of this Act 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 or her.

Cf. Copyright, Designs and Patents Act 1988, s. 193 (U.K.)

Remedies for Infringement

196. Proceedings for infringement of performers' rights—

(1) An infringement of any of the rights conferred by this Part of this Act is actionable by the performer in whom the right is vested.

(2) An infringement of any of the rights conferred by this Part of this Act is also actionable, on behalf of the performer, by a person having recording rights, without any need to obtain the consent of the performer to the bringing of the proceedings, unless the performer expressly requires his or her consent to be obtained.

(3) In proceedings for infringement of any of the rights conferred by this Part of this Act, the relief that a court may grant includes—

(a) An injunction (subject to such terms, if any, as the court thinks fit); and

(b) Damages.

(4) Where, in proceedings under this Part of this Act,—

(a) The infringement is established; and

(b) The court is satisfied that it is proper to do so, having regard to—

(i) The flagrancy of the infringement; and

(ii) Any benefit accruing to the defendant by reason of the infringement; and

(iii) All other relevant matters,—

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

Cf. Copyright Act 1968, s. 248J (Aust.)

197. Order for delivery up in civil proceedings—

(1) Where a person has an illicit recording of a performance in that person's possession, custody, or control in the course of a business,—

(a) Any person having performers' rights in relation to the performance under this Part of this Act; or

(b) Any person having recording rights in relation to the performance under this Part of this Act—
may apply to the court for an order that the illicit recording be delivered up to him or her or such other person as the court may direct.

(2) No order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 202 of this Act.

(3) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall, if an order under section 202 of this Act is not made, retain the illicit recording pending the making of an order, or the decision not to make an order, under that section.

(4) Notwithstanding any rule of court, an order may be made pursuant to this section on an *ex parte* application where service of notice of the application would cause undue delay or other serious detriment to the applicant.

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

Offences

198. Criminal liability for making, dealing with, using, or copying illicit recordings—

(1) Every person commits an offence against this section who, without the consent of the performer,—

(a) Makes for sale or hire; or

(b) Imports into New Zealand otherwise than for that person's private and domestic use; or

(c) Possesses in the course of a business with a view to committing any act infringing the rights conferred by this Part of this Act; or

(d) In the course of a business,—

(i) Offers or exposes for sale or hire; or

(ii) Sells or lets for hire; or

(iii) Distributes—

a recording that is, and that the person knows is, an illicit recording.

(2) Every person commits an offence against this section who causes a recording that is, and that the person knows is, an illicit recording, to be—

(a) Played in public or shown in public; or

(b) Broadcast or included in a cable programme.

(3) Every person commits an offence against this section who, otherwise than for that person's private and domestic use, copies a recording—

(a) Without the consent of the performer, if the person knows that the recording was made without the performer's consent; or

(b) If the copy is made for purposes different from those for which the performer gave his or her consent, and the person knows that the performer has not consented to the copying of the recording for different purposes; or

(c) If the original recording was made in accordance with any of the exemptions contained in any of sections 175 to 179 or sections 181 to 191 of this Act, and the copy is made for different purposes, and the person knows that the performer has not consented to the copying of the recording for those different purposes.

(4) Every person who commits an offence against subsection (1) or subsection (2) or subsection (3) of this section is liable on summary conviction,—

- (a) In the case of an offence against subsection (1) of this section, to a fine not exceeding \$5,000 for every illicit recording to which the offence relates, but not exceeding \$50,000 in respect of the same transaction, or to imprisonment for a term not exceeding 3 months;
- (b) In the case of an offence against subsection (2) or subsection (3) of this section, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 months.
- (5) Where any person is convicted of an offence against this section in circumstances where that offence involves the making of profit or gain, that offence shall be deemed to have caused a loss of property for the purposes of section 22 (1) (b) of the Criminal Justice Act 1985, and the provisions of that Act relating to the imposition of the sentence of reparation shall apply accordingly.

Cf. Copyright, Designs and Patents Act 1988, s. 198 (1), (2), (3) (a), (5), (6) (U.K.)

199. Order for delivery up in criminal proceedings—

- (1) The court before which proceedings are brought against a person for an offence against section 198 of this Act may, if satisfied that, at the time of the defendant's arrest or charge, the defendant had in his possession, custody, or control in the course of a business an illicit recording, order that the recording be delivered up to a person having performers' rights in relation to the performance or to such other person as the court may direct.
- (2) An order may be made under subsection (1) of this section 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 if it appears to the court unlikely that any order will be made under section 202 of this Act in the proceedings.
- (3) A person to whom an illicit recording is delivered up pursuant to an order made under this section shall retain the recording pending the making of an order, or the decision not to make an order, under section 202 of this Act.

Cf. Copyright, Designs and Patents Act 1988, s. 199 (1), (3), (5) (U.K.)

200. False representation of authority to give consent—

- (1) Every person commits an offence against this section who represents falsely that he or she is authorised by any person to give consent for the purposes of this Part of this Act in relation to a performance, unless he or she believes on reasonable grounds that he or she is entitled to do so.
- (2) A person who commits an offence against this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000.

Cf. Copyright, Designs and Patents Act 1988, s. 201 (U.K.)

201. Liability of officers of body corporate—

Where any body corporate is convicted of an offence against section 198 or section 200 of this Act, every director and every person concerned in the management of the body corporate shall be guilty of the offence if it is proved—

- (a) That the act that constituted the offence took place with his or her authority, permission, or consent; and
- (b) That he or she—
 - (i) Knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and
 - (ii) Failed to take all reasonable steps to prevent or stop it.

Cf. 1991, No. 69, s. 340

202. Order as to disposal of illicit recording—

- (1) An application may be made to the court for an order that an illicit recording delivered up pursuant to an order made under section 197 or section 199 of this Act shall be—
 - (a) Forfeited to such person having performers' rights in relation to the performance as the court may direct; or
 - (b) Destroyed or otherwise dealt with as the court thinks fit.

(2) In considering what order (if any) should be made under subsection (1) of this section, the court shall have regard to—

(a) Whether other remedies available in proceedings for infringement of the rights conferred by this Part of this Act would be adequate to compensate the person or persons entitled to the rights and to protect the interests of that person or those persons; and

(b) The need to ensure that no illicit recording is disposed of in a manner that would adversely affect a person having performers' rights in the performance.

(3) The court shall issue directions as to the service of notice on persons having an interest in the recording.

(4) Any person having an interest in the recording is entitled—

(a) To appear in proceedings for an order under this section, whether or not he or she is served with notice; and

(b) To appeal against any order made, whether or not he or she appears in the proceedings;—

and an order made under subsection (1) of this section shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(5) Where there is more than one person interested in a recording, the court may direct that the recording be sold, or otherwise dealt with, and the proceeds divided, and shall make any other order as it thinks just.

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

Cf. Copyright, Designs and Patents Act 1988, s. 204 (U.K.)

Application to Foreign Countries

203. Application of this Part to Convention countries—

(1) This Part of this Act shall apply in respect of a performance given in any country by a citizen or subject of, or a person domiciled or resident in, a Convention country until—

(a) The close of the 31st day of December 1995; or

(b) The coming into force in respect of that Convention country of an Order in Council made under section 204 of this Act,—

whichever is the earlier.

(2) For the avoidance of doubt, it is hereby declared that subsection (1) of this section applies, in relation to a person referred to in that subsection as a citizen or subject of a Convention country or as a person domiciled resident in a Convention country, whether or not the country was, at the time the person was a citizen or subject of it or domiciled or resident there, a Convention country.

204. Application of this Part to Convention and other countries—

(1) The Governor-General may from time to time, by Order in Council, apply in relation to any country (other than New Zealand) any of the provisions of this Part of this Act specified in the order.

(2) An Order in Council made under this section may—

(a) Apply any provisions of this Part of this Act subject to such exceptions and modifications as are specified in the order; and

(b) Direct that any provisions of this Part of this Act apply either generally or in relation to such classes of performances as are specified in the order.

(3) Except in the case of a Convention country, the Governor-General shall not make an Order in Council under this section in relation to a country unless satisfied that reciprocal provision has been or will be made under the law of that country, in respect of the class of performance to which the order relates.

(4) An Order in Council under this section may be so made as to apply generally to a country, or to any territories for whose international relations the Government of that country is responsible, or to the country exclusive of all or any such territories.

Cf. Copyright, Designs and Patents Act 1988, ss. 159, 208 (U.K.)

PART X COPYRIGHT TRIBUNAL

Constitution

205. Copyright Tribunal—

The Tribunal constituted by section 30 of the Copyright Act 1962 and known as the Copyright Tribunal shall continue in being.

206. Membership of Tribunal—

- (1) The Tribunal shall consist of a Chairperson and 2 other persons.
- (2) The Chairperson of the Tribunal—
 - (a) Shall be appointed as Chairperson by the Governor-General on the recommendation of the Minister; and
 - (b) Shall be a barrister or solicitor of the High Court of not less than 7 years' practice, whether or not the barrister or solicitor holds or has held judicial office.
- (3) The 2 other persons shall be appointed as members of the Tribunal by the Governor-General on the recommendation of the Minister.
- (4) No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 by virtue merely of his or her appointment to the Tribunal.

Cf. 1962, No. 33, s. 30 (1), (2), (7)

207. Term of office of members of Tribunal—

- (1) Every member of the Tribunal shall hold office for a term not exceeding 5 years.
- (2) Any member of the Tribunal may hold that office concurrently with any other office held by him or her and may from time to time be reappointed.
- (3) Where the term for which a member was appointed expires, that member, unless sooner vacating or removed from office under section 208 of this Act, shall continue to hold office, by virtue of the appointment for the term that has expired, until—
 - (a) That member is reappointed; or
 - (b) A successor to that member is appointed.
- (4) The powers of the Tribunal shall not be affected by any vacancy in its membership.

Cf. 1962, No. 33, s. 30 (3)–(6)

208. Vacation of office—

- (1) Any member of the Tribunal may at any time resign his or her office by delivering a notice in writing to that effect to the Minister.
- (2) Any member of the Tribunal shall be deemed to have vacated his or her office if he or she dies or is, under the Insolvency Act 1967, adjudged bankrupt.
- (3) Any member of the Tribunal may at any time be removed from office by the Governor-General for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

Cf. 1962, No. 33, ss. 31, 32

209. Deputies of members—

- (1) Where any member of the Tribunal—
 - (a) Becomes incapable of acting by reason of illness, absence, or other sufficient cause; or
 - (b) Deems it not proper or desirable that he or she should act in any particular proceedings,—

the Governor-General, on the recommendation of the Minister, may appoint a person to act as the deputy of the member for the period or purpose stated in the appointment.

(2) No person shall be appointed as a deputy of the Chairperson unless he or she is eligible for appointment as Chairperson.

(3) Any deputy shall, while acting as such, be deemed to be a member of the Tribunal, and the deputy of the Chairperson shall have all the powers of the Chairperson.

(4) No appointment of a deputy, and no acts done by a deputy as such, and no acts done by the Tribunal while any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

Cf. 1962, No. 33, s.35

210. Remuneration and travelling allowances—

(1) The Tribunal is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid to members of the Tribunal, out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

Cf. 1962, No. 33, s. 35

Jurisdiction and Procedure

211. Jurisdiction of Tribunal—

The Tribunal shall have such functions as are conferred on it by this Act or any other enactment.

Cf. 1962, No. 33, s. 37

212. Parties to proceedings—

(1) The operator of the licensing scheme or the proposed licensing scheme shall be a party to any proceedings under section 149 or section 150 or section 151 or section 153 or section 154 or section 157 or section 158 or section 159 of this Act.

(2) The Tribunal may direct that an organisation or person be added as a party to any proceedings before the Tribunal under this Act where the Tribunal is satisfied that the organisation or person has a substantial interest in the matter in dispute and either—

(a) The organisation or person applies to be made a party to those proceedings; or

(b) The Tribunal of its own motion considers it desirable.

(3) The Attorney-General, if in his or her opinion the public interest is or may be involved, may, on giving such notice to other parties as the Tribunal may direct, appear and be heard, or present submissions in writing on any proceedings before the Tribunal.

Cf. 1962, No. 33, s. 42

213. Sittings of Tribunal—

(1) The Tribunal shall fix a time and place for the hearing of proceedings and shall cause notice to be given to the parties of the time and place so fixed.

(2) No sitting of the Tribunal shall take place, except for the purposes of interlocutory or other ancillary matters, unless all members are present.

(3) Every sitting of the Tribunal shall be held in such place as the Tribunal deems convenient.

(4) Every sitting of the Tribunal shall be held in public unless the Tribunal in any particular case, having regard to the interests of the parties and of all other persons concerned, considers that the sitting or any part of it should be held in private.

(5) The Tribunal may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings.

(6) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$3,000 who acts in contravention of any order made by the Tribunal under subsection (5) of this section.

(7) Any sitting of the Tribunal may be adjourned from time to time and from place to place.
Cf. 1962, No. 33, s. 43 (1)–(4)

214. Procedure of Tribunal—

(1) Any party to proceedings before the Tribunal may appear personally or by the party's barrister, solicitor, or agent.

(2) The Tribunal may appoint a barrister or solicitor to appear and be heard in proceedings as counsel assisting the Tribunal.

(3) The decision of the majority of members shall be the decision of the Tribunal.

(4) Every decision of the Tribunal shall be in writing and shall state the reasons for the decision.

(5) Except as otherwise provided in this Part of this Act, the Tribunal shall determine its own procedure.

Cf. 1962, No. 33, s. 43 (5)–(8)

215. Evidence in proceedings before Tribunal—

(1) The Tribunal may receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matters before it, whether or not the same would be admissible in a court of law.

(2) The Tribunal may take evidence on oath, and for that purpose any member or officer of the Tribunal may administer an oath.

(3) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath.

(4) Subject to subsections (1) to (3) of this section, the Evidence Act 1908 applies to the Tribunal in the same manner as if the Tribunal were a court within the meaning of that Act.

Cf. 1962, No. 33, s. 44; 1993, No. 82, s. 106

216. Witness summons—

(1) The Tribunal may of its own motion, or on the application of any party to the proceedings, issue a witness summons to any person requiring that person to attend before the Tribunal to give evidence at the hearing of the proceedings.

(2) The witness summons shall state—

(a) The place where the person is to attend; and

(b) The date and time when the person is to attend; and

(c) The papers, documents, records, or things that that person is required to bring and produce to the Tribunal; and

(d) The entitlement to be tendered or paid a sum in respect of allowances and travelling expenses; and

(e) The penalty for failing to attend.

(3) The power to issue a witness summons may be exercised by the Tribunal or the Chairperson, or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal or the Chairperson.

Cf. 1993, No. 82, s. 109

217. Service of summons—

(1) A witness summons may be served—

(a) By delivering it personally to the person summoned; or

(b) By posting it personally registered letter addressed to the person summoned at that person's usual place of residence.

(2) The summons shall,—

- (a) Where it is served under subsection (1) (a) of this section, be served at least 24 hours before the attendance of the witness is required; or
- (b) Where it is served under subsection (1) (b) of this section, be served at least 10 days before the date on which the attendance of the witness is required.
- (3) If the summons is posted by registered letter, it shall be deemed for the purposes of subsection (2) (b) of this section to have been served at the time when the letter would be delivered in the ordinary course of post.

Cf. 1993, No. 82, s. 110

218. Witnesses' allowances—

(1) Every witness attending before the Tribunal to give evidence pursuant to a summons shall be entitled to be paid witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Summary Proceedings Act 1957, and those regulations shall apply accordingly.

(2) On each occasion on which the Tribunal issues a summons under section 216 of this Act, the Tribunal, or the person exercising the power of the Tribunal under subsection (3) of that section, shall fix an amount that, on the service of the summons, or at some other reasonable time before the date on which the witness is required to attend, shall be paid or tendered to the witness.

(3) The amount fixed under subsection (2) of this section shall be the estimated amount of the allowances and travelling expenses to which, in the opinion of the Tribunal or person, the witness will be entitled according to the prescribed scales if the witness attends at the time and place specified in the summons.

(4) Where a party to the proceedings has requested the issue of the witness summons, the fees, allowances, and travelling expenses payable to the witness shall be paid by that party.

(5) Where the Tribunal has of its own motion issued the witness summons, the Tribunal may direct that the amount of those fees, allowances, and travelling expenses—

- (a) Form part of the costs of the proceedings; or
- (b) Be paid from money appropriated by Parliament for the purpose.

Cf. 1993, No. 82, s. 111

219. Privileges and immunities—

(1) Witnesses appearing before the Tribunal shall have the same privileges and immunities as witnesses have in proceedings in a District Court.

(2) Counsel and agents appearing before the Tribunal shall have the same privileges and immunities as counsel have in proceedings in a District Court.

Cf. 1993, No. 82, s. 112

220. Non-attendance or refusal to co-operate—

(1) Every person commits an offence who, after being summoned to attend to give evidence before the Tribunal or to produce to the Tribunal any papers, documents, records, or things, without sufficient cause,—

- (a) Fails to attend in accordance with the summons; or
- (b) Refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the proceedings; or
- (c) Fails to produce any such paper, document, record, or thing.

(2) Every person who commits an offence against subsection (1) of this section is liable on summary conviction to a fine not exceeding \$1,500.

(3) No person summoned to attend before the Tribunal shall be convicted of an offence against subsection (1) of this section unless there was tendered or paid to that person travelling expenses in accordance with section 218 of this Act.

Cf. 1993, No. 82, s. 113

221. Contempt of Tribunal—

- (1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—
- (a) Assaults, threatens, or intimidates, or intentionally insults, the Tribunal or any member of it or any special adviser to or officer of the Tribunal, during a sitting of the Tribunal, or in going to, or returning from, any sitting; or
 - (b) Intentionally interrupts the proceedings of the Tribunal or otherwise misbehaves while the Tribunal is sitting; or
 - (c) Intentionally and without lawful excuse disobeys an order or direction of a member of the Tribunal in the course of any proceedings before the Tribunal.
- (2) A member of the Tribunal may order the exclusion from a sitting of the Tribunal of any person whose behaviour, in that member's opinion, constitutes an offence against subsection (1) of this section, whether or not such person is charged with the offence; and any member of the Police may take such steps as are reasonably necessary to enforce such an exclusion.

222. Costs—

- (1) The Tribunal, in any proceedings before it under this Act, may make such order as to costs as it thinks fit.
- (2) Any such order as to costs may be filed in a District Court and may be enforced as a judgment of that Court.

Cf. 1962, No. 33, s. 46

223. Stating case for High Court—

- (1) The Tribunal may, at any time, before or during the hearing or before delivering its decision, on the application of any party to the proceedings or of its own motion, state a case for the opinion of the High Court on any question of law arising in any proceedings before the Tribunal.
- (2) The Tribunal shall give notice to the parties to the proceedings of the Tribunal's intention to state a case under this section, specifying the registry of the High Court in which the case is to be filed.
- (3) Except where the Tribunal intends to state the case of its own motion, the question shall be in the form of a special case to be drawn up by the parties to the proceedings, and, if the parties do not agree, to be settled by the Tribunal.
- (4) Where the Tribunal intends to state a case of its own motion, it shall itself state and sign a case setting forth the facts and questions of law arising for the determination of the High Court.
- (5) Every case stated for the High Court under this section shall be dealt with in accordance with rules of Court.
- (6) The High Court shall hear and determine any question submitted to it under this section, and shall remit the case with its opinion to the Tribunal.

Cf. 1962, No. 33, s. 47; 1993, No. 82, s. 122

224. Appeal on question of law—

- (1) Where any party to any proceedings before the Tribunal under this Act is dissatisfied with any determination of the Tribunal as being erroneous in point of law, that party may appeal to the High Court on that question of law.
- (2) Every appeal under this section shall be dealt with in accordance with rules of Court.

Cf. 1993, No. 94, s. 58

PART XI MISCELLANEOUS PROVISIONS

225. Rights and privileges under other enactments or common law—

- (1) Nothing in this Act affects—
 - (a) Any right or privilege of any person under any other enactment:
 - (b) Any right or privilege of the Crown existing otherwise than under an enactment:
 - (c) Any right or privilege of the House of Representatives:
 - (d) The right of the Crown or any person deriving title from the Crown to sell, use, or otherwise deal with objects forfeited under the laws relating to customs and excise:
 - (e) The operation of any rule of equity relating to breaches of trust or confidence.
- (2) Subject to subsection (1) of this section, no copyright or right in the nature of copyright shall exist otherwise than under this Act or some other enactment in that behalf.
- (3) Nothing in this Act affects any rule of law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise.
- (4) Nothing in this Act affects any right of action or other remedy, whether civil or criminal, available otherwise than under this Act in respect of acts infringing any of the rights conferred by Part IV of this Act.

Cf. Copyright, Designs and Patents Act 1988, s. 171 (U.K.); 1962, No. 33, ss. 5, 67

Devices Designed to Circumvent Copy-Protection

226. Devices designed to circumvent copy-protection—

- (1) Where copies of a copyright work are issued to the public, by or with the licence of the copyright owner, in an electronic form that is copy-protected,—
 - (a) The person issuing the copies to the public has the same rights against a person specified in subsection (2) of this section as a copyright owner has in respect of an infringement of copyright; and
 - (b) The person issuing the copies to the public has the same rights under section 122 or section 132 of this Act in relation to any device or means (of the kind referred to in subsection (2) (a) of this section) that a person has in his or her possession, custody, or control with the intention that it should be used to make infringing copies of copyright works, as a copyright owner has in relation to an infringing copy.
- (2) The person referred to in subsection (1) of this section is a person who—
 - (a) Makes, imports, sells, lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, any device or means specifically designed or adapted to circumvent the form of copy-protection employed; or
 - (b) Publishes information intended to enable or assist persons to circumvent that form of copy-protection,—knowing or having reason to believe that the devices, means, or information will be used to make infringing copies.
- (3) References in this section to copy-protection include any device or means intended to prevent or restrict copying of a work or to impair the quality of copies made.
- (4) Sections 126 to 129 of this Act apply in relation to proceedings under this section.
- (5) Section 134 of this Act applies, with all necessary modifications, in relation to the disposal of anything delivered up under subsection (1) (b) of this section.

Cf. Copyright, Designs and Patents Act 1988, s. 296 (U.K.)

227. Offence of fraudulently receiving programmes—

(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 who, with intent to avoid payment of any charge applicable to the reception of a programme included in a broadcasting service or cable programme service provided from a place in New Zealand, receives such a programme.

(2) Where any body corporate is convicted of an offence against this section, every director and every person concerned in the management of the body corporate shall be guilty of the offence if it is proved—

- (a) That the act that constituted the offence took place with his or her authority, permission, or consent; and
- (b) That he or she—
 - (i) Knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and
 - (ii) Failed to take all reasonable steps to prevent or stop it.

Cf. Copyright, Designs and Patents Act 1988, s. 297 (U.K.); 1991, No. 69, s. 340

228. Rights and remedies in respect of apparatus, etc., for unauthorised reception of transmissions—

(1) A person who—

- (a) Makes charges for the reception of programmes included in a broadcasting service or cable programme service provided from a place in New Zealand; or
- (b) Sends encrypted transmissions of any other description from a place in New Zealand—

is entitled to the rights and remedies in subsections (2) and (3) of this section.

(2) A person to whom subsection (1) of this section applies—

- (a) Has the same rights and remedies against a person referred to in subsection (3) of this section as a copyright owner has in respect of an infringement of copyright; and
- (b) Has the same rights under section 122 or section 132 of this Act in relation to any apparatus or device (of the kind referred to in subsection (3) (a) of this section) as a copyright owner has in relation to an infringing copy.

(3) The person referred to in subsection (2) of this section is a person who—

- (a) Makes, imports, sells, or lets for hire any apparatus or device designed or adapted to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so; or
- (b) Publishes any information that is calculated to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so.

(4) In section 121 (1) of this Act as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright existed in the work shall be construed as a reference to not knowing or having reason to believe that the acts complained of infringed the rights conferred by this section.

(5) Section 134 of this Act applies, with all necessary modifications, in relation to the disposal of anything delivered up under subsection (2) (b) of this section.

Cf. Copyright, Designs and Patents Act 1988, s. 298 (U.K.)

Other Countries

229. Supplementary provisions as to fraudulent reception—

(1) The Governor-General may from time to time, by Order in Council,—

- (a) Provide that section 227 of this Act applies in relation to programmes included in services provided from a country or territory outside New Zealand; and
- (b) Provide that section 228 of this Act applies in relation to such programmes and to encrypted transmissions sent from such a country or territory.

(2) No such order shall be made unless it appears to the Governor-General that provision has been or will be made under the laws of that country or territory giving adequate protection to persons making charges for programmes included in broadcasting services or cable programme services provided from New Zealand or, as the case may be, for encrypted transmissions sent from New Zealand.

(3) Where sections 227 and 228 of this Act apply in relation to a broadcasting service or cable programme service, they also apply to any service run for the person providing that service, or a person providing programmes for that service, where the service so run consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both.

Cf. Copyright, Designs and Patents Act 1988, s. 299 (U.K.)

230. Application to Convention countries—

(1) Subject to subsection (2) of this section, the provisions of this Act, other than the provisions of Part IX of this Act, shall—

- (a) Apply in relation to persons who are citizens or subjects of any Convention country or are domiciled or resident there, as they apply in relation to persons who are New Zealand citizens or are domiciled or resident in New Zealand;
- (b) Apply in relation to bodies incorporated under the law of any Convention country as they apply in relation to bodies incorporated under the law of New Zealand;
- (c) Apply in relation to works first published in any Convention country as they apply in relation to works first published in New Zealand;
- (d) Apply in relation to broadcasts made from, or cable programmes sent from, any Convention country as they apply in relation to broadcasts made from, or cable programmes sent from, New Zealand,—

until the close of the 31st day of December 1995 or, in relation to any particular Convention country, the coming into force in respect of that Convention country of an Order in Council made under section 232 of this Act, whichever is the earlier.

(2) For the avoidance of doubt, it is hereby declared that subsection (1) of this section applies, in relation to a state of affairs or an action referred to in that subsection as existing or taking place in a Convention country, whether or not the country in which the state of affairs existed or the action was taken was, at the time the state of affairs existed or the action was taken, a Convention country.

(3) No provision of this Act shall apply, pursuant to subsection (1) of this section, to a work made before the commencement of this Act unless—

- (a) Copyright existed in the work under the Copyright Act 1962 immediately before the commencement of this Act; or
- (b) The work enjoyed protection in the nature of copyright in any Convention country and, at the commencement of this Act, the term of that protection had not expired; or
- (c) The work was first published in a Convention country.

231. Expenditure or liability incurred in connection with copyright work—

(1) This section applies in any case where—

- (a) A work was made before the commencement of this Act; and
- (b) Copyright did not exist in the work under the Copyright Act 1962 when the work was made; and
- (c) On the commencement of this Act, copyright exists in the work pursuant to section 230 of this Act.

(2) Where, in any case to which subsection (1) of this section applies, a person incurred any expenditure or liability relating to an act that, at the time the act was done, was not an act restricted by copyright in the work, the person does not do an act restricted by copyright by doing, or continuing to do, that act in respect of the work when copyright exists in the work.

(3) Notwithstanding subsection (2) of this section, an act that under that subsection is not an act restricted by copyright when copyright exists in the work may become an act restricted by copyright if the owner of the copyright or his or her exclusive licensee (if any) pays the person such compensation for the

person's expenditure or liability as may be agreed upon or, in default of agreement, as shall be determined by arbitration in accordance with the provisions of the Arbitration Act 1908.

232. Application to Convention and other countries—

(1) The Governor-General may from time to time, by Order in Council, apply in relation to any country (other than New Zealand) any of the provisions of this Act specified in the order, other than the provisions of Part IX of this Act.

(2) Subject to subsection (1) of this section, an Order in Council made under this section may apply in relation to a country any of the provisions of this Act so that the provisions—

- (a) Apply in relation to persons who are citizens or subjects of that country or are domiciled or resident there, as they apply in relation to persons who are New Zealand citizens or are domiciled or resident in New Zealand;
- (b) Apply in relation to bodies incorporated under the law of that country as they apply in relation to bodies incorporated under the law of New Zealand;
- (c) Apply in relation to works first published in that country as they apply in relation to works first published in New Zealand;
- (d) Apply in relation to broadcasts made from, or cable programmes sent from, that country as they apply in relation to broadcasts made from, or cable programmes sent from, New Zealand.

(3) Subject to subsection (1) of this section, an Order in Council made under this section may make provision for all or any of the matters mentioned in subsection (2) of this section and may—

- (a) Apply any provisions of this Act subject to such exceptions and modifications as are specified in the order; and
- (b) Direct that any provisions of this Act apply either generally or in relation to such classes of works, or other classes of cases, as are specified in the order.

(4) Except in the case of a Convention country, the Governor-General shall not make an Order in Council under this section in relation to a country unless satisfied that provision has been or will be made under the law of that country, in respect of the class of work to which the order relates, giving adequate protection to copyright owners under this Act.

(5) An Order in Council under this section may be so made as to apply generally to a country, or to any territories for whose international relations the Government of that country is responsible, or to the country exclusive of all or any such territories.

(6) Where—

- (a) An unpublished work is of unknown authorship but there are reasonable grounds to suppose that the author of the work was at the material time a citizen or subject of a country other than New Zealand or domiciled or resident in a country other than New Zealand; and
- (b) Provision has been made in an Order in Council made under this section for applying any of the provisions of this Act in relation to persons who are citizens or subjects of that other country or are domiciled or resident there; and
- (c) Under the law of that other country a person is authorised to represent the author, or to protect and enforce the rights of the author in relation to that work,—

the person so authorised shall be treated as if he or she were the author of the work for the purposes of the application of any provisions of this Act pursuant to the order.

Cf. Copyright, Designs and Patents Act 1988, ss. 159, 208 (U.K.); Copyright Act 1968, s. 184 (Aust.); 1962, No. 33, s. 49

233. Denial of copyright to persons connected with countries not giving adequate protection to New Zealand works—

(1) Whenever it appears to the Governor-General that the law of a country, other than a Convention country, fails to give adequate protection to copyright in New Zealand works, or to one or more classes of such works, the Governor-General may by Order in Council make provision in accordance with this section restricting the rights conferred by this Act in relation to that country.

(2) An Order in Council made under this section shall designate the country concerned and provide that, for the purposes specified in the order, works first published after a date specified in the order shall not be treated as qualifying for copyright by virtue of such publication if at that time the authors are—

- (a) Citizens or subjects of that country (not domiciled or resident in New Zealand); or
- (b) Bodies incorporated under the law of that country;—

and the order may make such provision for all purposes of this Act or for such purposes as are specified in the order, and either generally or in relation to such classes of cases as are specified in the order, having regard to the nature and extent of the failure referred to in subsection (1) of this section.

(3) An Order in Council under this section may be so made as to apply generally to a country, or to any territories for whose international relations the Government of that country is responsible, or to the country exclusive of all or any such territories.

(4) In this section,—

“New Zealand works” means works of which the author was at the material time a person to whom section 18 of this Act applied:

“Works” means literary, dramatic, musical, and artistic works, sound recordings, and films.

Cf. Copyright, Designs and Patents Act 1988, s. 160 (U.K.); Copyright Act 1968, s. 185 (Aust.); 1962, No. 33, s. 51

234. Regulations—

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing a body as a judicial body for the purposes of this Act:
- (b) Prescribing classes of libraries for the purposes of section 50 of this Act:
- (c) Prescribing institutions for the purposes of section 117 of this Act:
- (d) Prescribing bodies for the purposes of section 69 or section 72 or section 89 or section 90 or section 185 or section 190 or section 191 of this Act:
- (e) Prescribing classes of broadcasts or cable programmes for the purposes of section 90 or section 191 of this Act:
- (f) Prescribing the form in which a notice is to be given under section 136 (1) of this Act:
- (g) Prescribing the particulars to be contained in a notice given under section 136 (1) of this Act:
- (h) Requiring a person giving a notice under section 136 (1) of this Act, either at the time of giving the notice or subsequently, to furnish evidence in support of the claim that an item is a work in which the person owns the copyright:
- (i) Requiring—
 - (i) A person giving a notice under section 136 (1) of this Act, either at the time of giving the notice or subsequently; or
 - (ii) A person to whom an item is to be or has been released from detention under section 140 (1) of this Act—

to give security or an indemnity, or both, to such persons, of such amount, and on such terms and conditions as may be determined by the Comptroller:

- (j) Providing for exceptions to any requirement to give security or an indemnity imposed by any regulations made under paragraph (i) of this section:
- (k) Providing for the disposition of any security given under any regulations made under paragraph (i) of this section:
- (l) Providing for the forfeiture to the claimant, by consent, of an item detained under section 140 (1) of this Act:
- (m) Prescribing a fee for the purposes of section 144 (2) (c) of this Act:
- (n) Imposing requirements in respect of licensing bodies or any specified class or classes of licensing body or any specified licensing body, in relation to all or any of the following matters:
 - (i) The contents of the constitution or other form of rules of the licensing body or bodies:

- (ii) The representation of copyright owners in the management of the licensing body or bodies:
- (iii) The collection, holding, and distribution of money by the licensing body or bodies:
- (iv) The disclosure of the financial affairs of the licensing body or bodies:
- (v) Access to, and disclosure of, records held by the licensing body or bodies:
- (vi) Any other matter relating to the conduct or the operation of the licensing body or bodies:
- (o) Authorising, subject to such conditions as may be specified in the regulations, the rental to the public of copies of—
 - (i) Any specified class or classes of computer programs; or
 - (ii) Any specified class or classes of sound recordings; or
 - (iii) Any film or specified class or classes of films,—

without the consent of the owner of the copyright in the work:

- (p) Regulating the making, importation, sale, hire, or use of decoding equipment:
- (q) Prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under paragraph (p) of this section, and prescribing fines, not exceeding \$5,000, that may, on summary conviction, be imposed in respect of any such offences:
- (r) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

Cf. 1962, No. 33, ss. 29 (4), (5), 66

Transitional Provisions and Savings

235. Transitional provisions and savings—

The transitional provisions in the First Schedule to this Act shall have effect for the purposes of this Act.

Cf. 1962, No. 33, s. 68 (1)

236. Consequential amendments and repeals—

- (1) The enactments specified in the Second Schedule to this Act are hereby amended in the manner indicated in that Schedule.
- (2) The enactments specified in the Third Schedule to this Act are hereby repealed.
- (3) The regulations specified in the Fourth Schedule to this Act are hereby revoked.

SCHEDULES

Section 235

FIRST SCHEDULE TRANSITIONAL PROVISIONS AND SAVINGS

1. Interpretation—

(1) In this Schedule, unless the context otherwise requires,—

“The 1918 Act” means the Copyright Act 1913:

“The 1962 Act” means the Copyright Act 1962:

“The 1985 Amendment” means the Copyright Amendment Act 1985:

“The new copyright provisions” means the provisions of this Act: “Work” means,—

- (a) In relation to the 1913 Act, any thing recognised by that Act as a subject of copyright; and

(b) In relation to the 1962 Act, any thing recognised by that Act as a subject of copyright.

(2) References in this Schedule to “commencement”, without more, are to the date on which the new copyright provisions come into force.

(3) For the purposes of this Schedule, a work of which the making extended over a period shall be taken to have been made when its making was completed.

(4) Unless the context otherwise requires, provisions of the 1913 Act or the 1962 Act referred to in this Schedule shall be taken as continuing in force for the purposes of this Schedule, notwithstanding the repeal of the 1913 Act and the 1962 Act.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, paras. 1, 2 (1) (U.K.); 1962, No. 33, First Schedule, 47 (2)

2. Continuity of the law—

(1) A reference in an enactment, instrument, or other document to copyright that, apart from this Act, would be construed as referring to copyright under the 1962 Act or any corresponding earlier enactment, shall be construed, so far as may be required for continuing its effect, as being, or as the case may require including, a reference to copyright under this Act.

(2) A reference in an enactment, instrument, or other document to a work in which copyright exists that, apart from this Act, would be construed as referring to a work in which copyright exists under the 1962 Act or any corresponding earlier enactment, shall be construed, so far as may be required for continuing its effect, as being, or as the case may require including, a reference to a work in which copyright exists under this Act.

(3) Express or implied references in this Act or any other enactment, instrument, or document to any of the new copyright provisions shall, so far as the context permits, be construed as including, in relation to times, circumstances, and purposes before commencement, a reference to corresponding earlier provisions.

(4) An express or implied reference in an instrument or other document to a provision repealed by this Act shall be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of this Act.

(5) The provisions of this clause have effect subject to any specific transitional and savings provision and to any express amendment made by this Act.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 4 (2), (4)–(6) (U.K.); 1962, No. 33, First Schedule, clause 46 (1) (a), (b)

3. Copyright under new copyright provisions in world in which copyright exists at commencement—

(1) Copyright exists under the new copyright provisions in any work in which copyright existed immediately before commencement.

(2) For the purposes of subclause (1) of this clause, a work in which copyright existed immediately before commencement includes a work in which a right was conferred by section 32 of the 1913 Act in substitution for a right existing immediately before the commencement of the 1913 Act.

(3) Where copyright exists under the new copyright provisions in a work in which copyright existed immediately before commencement, the copyright in that work under the new provisions is subject to any modifications made by the provisions of this Schedule.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, paras. 2 (2) (a), 5 (1) (U.K.); 1962, No. 33, First Schedule, clause 38 (2)

4. Application of new copyright provisions to works in which copyright exists at commencement—

(1) The new copyright provisions—

(a) Apply to any work in which copyright existed immediately before commencement; and

(b) Are deemed to be satisfied, so far as they relate to qualification for copyright, by every work in which copyright existed immediately before commencement.

(2) For the purposes of subclause (1) of this clause, a work in which copyright existed immediately before commencement includes a work in which a right was conferred by section 32 of the 1913 Act in substitution for a right existing immediately before the commencement of the 1913 Act.

(3) Where the new copyright provisions apply to a work in which copyright existed immediately before commencement, the new copyright provisions are subject, in their application to that work, to any modifications made by the provisions of this Schedule.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, paras. 3, 35 (U.K.); 1962, No. 33, First Schedule, clauses 38 (2), 47 (1)

5. Works may qualify under new copyright provisions—

(1) Subject to subclause (2) of this clause, a work made before commencement may qualify for copyright after commencement—

- (a) Under section 19 of this Act; or
- (b) Under section 230 of this Act; or
- (c) Under an Order in Council made under section 232 of this Act.

(2) A work first published in New Zealand before the 1st day of April 1963 does not qualify for copyright under section 19 (1) (a) of this Act if the work was published elsewhere more than 14 days before the publication in New Zealand.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 5 (2) (U.K.); 1962, No. 33, First Schedule, clause 2 (1)

6. No copyright under new copyright provisions in certain works—

(1) No copyright exists, under the new copyright provisions, in the following works:

- (a) A film, within the meaning of this Act, made before the 1st day of April 1963:
- (b) A broadcast made before the 1st day of April 1963:
- (c) The typographical arrangement of a published edition made before the 1st day of April 1963.

(2) Section 28 of this Act does not confer copyright on a work that was, before the 1st day of April 1963, made by an officer or employee of, or published by, an international organisation to which that section applies.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, paras. 7 (1), 9 (U.K.); 1962, No. 33, First Schedule, clauses 14, 17, 20, 33

Interpretation Provisions

7. Meaning of “author”—

The question of authorship of a work made before commencement shall be determined in accordance with—

- (a) Clause 11 (3) (b) of this Schedule in relation to a sound-track associated with a cinematograph film within the meaning of the 1962 Act:
- (b) Clause 12 (1) of this Schedule in relation to a film made before the 1st day of April 1963:
- (c) The new copyright provisions for the purposes of the rights conferred by Part IV of this Act:
- (d) The law in force at the time the work was made, for all other works and purposes.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 10 (U.K.)

8. Meaning of “issue to the public”—

(1) Subsections (2) and (3) of section 9 of this Act do not apply in relation to a copy of a computer program, sound recording, or film acquired by any person before commencement for the purpose of renting the copy to the public.

(2) In subclause (1) of this clause,—

“Film” includes a film that was an original dramatic work within the meaning of the 1913 Act:

“Sound recording” includes a contrivance of the kind to which section 25 of the 1913 Act applied.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, paras. 2 (2) (b), 14 (2) (U.K.)

9. Meaning of “publication”—

Section 10 (2) of this Act applies only where the construction of the building began after commencement.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 45 (U.K.)

10. Meaning of “infringing copy”—

For the purposes of section 12 of this Act, the question of whether the making of an object constituted an infringement of copyright, or would have constituted an infringement of copyright had the object been made in New Zealand, shall be determined,—

- (a) In relation to an object made on or after the 1st day of April 1963 and before commencement, by reference to the provisions of the 1962 Act:
- (b) In relation to an object made before the 1st day of April 1963, by reference to the provisions of the 1913 Act.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 14 (3) (U.K.)

Description of Copyright

11. Sound-tracks to be treated as sound recordings—

(1) In this clause,—

“Cinematograph film” or “film” has the meaning that “cinematograph film” had in the 1962 Act:

“Sound recording” has the meaning it has in this Act.

(2) A sound-track associated with a cinematograph film, being a soundtrack to which the 1962 Act applied before commencement, shall be treated for the purposes of the new copyright provisions not as part of the film, but as a sound recording.

(3) The following provisions apply to a sound-track treated as a sound recording under subclause (2) of this clause:

- (a) Copyright exists in the sound recording only if copyright existed in the film immediately before commencement, and it continues to exist until copyright in the film expires:
- (b) The author and first owner of copyright in the film shall be treated as the author and first owner of the copyright in the sound recording:
- (c) Anything done before commencement under or in relation to the copyright in the film continues to have effect in relation to the sound recording.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 8

12. Films—

(1) The new copyright provisions have effect in relation to a film—

(a) That was made before the 1st day of April 1963; and

(b) That was an original dramatic work within the meaning of the 1913 Act—

as if it were an original dramatic work within the meaning of the new copyright provisions, except that the person who was the author of the work for the purposes of the 1918 Act shall be taken to be the author for the purposes of the new copyright provisions.

(2) The new copyright provisions in relation to photographs apply in relation to photographs forming part of a film—

(a) That was made before the 1st day of April 1963; and

(b) That was an original dramatic work within the meaning of the 1913 Act.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 7 (2), (3) (U.K.); 1962, No. 33, First Schedule, clauses 15, 16

Acts Restricted by Copyright

13. Certain dramatic or musical works published before 1 April 1914—

(1) Where—

(a) A dramatic or musical work was published before the 1st day of April 1914; and

(b) The copyright that existed immediately before commencement (being the right conferred by section 32 of the 1913 Act in substitution for a right existing immediately before the commencement of the 1913 Act) did not include the sole right to perform the work in public,—

the acts restricted by the copyright under the new copyright provisions shall be treated as not including—

(c) Performing the work in public:

(d) Broadcasting the work or including it in a cable programme:

(e) Doing any of the above in relation to an adaptation of the work.

(2) Where—

(a) A dramatic or musical work was published before the 1st day of April 1914; and

(b) The copyright that existed immediately before commencement (being the right conferred by section 32 of the 1913 Act in substitution for a right existing immediately before the commencement of the 1913 Act) consisted only of the sole right to perform the work in public,—

the acts restricted by the copyright under the new copyright provisions shall be treated as consisting only of the acts of—

(c) Performing the work in public:

(d) Broadcasting the work or including it in a cable programme:

(e) Doing any of the above in relation to an adaptation of the work.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 17 (U.K.); 1962, No. 33, First Schedule, clauses 38, 40

Ownership of Copyright

14. First ownership—

The question of first ownership of copyright in a work made before commencement shall be determined in accordance with the law in force at the time the work was made.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 11 (1)

15. Certain literary works made before 1 April 1963—

Where a literary work—

(a) Was made before the 1st day of April 1963; and

(b) Was made in the course of the author's employment;—

the ownership of copyright in the work, under section 8 (1) (b) of the 1913 Act, by the person by whom the author was employed shall be subject to a right in the author to restrain the publication of the work otherwise than as part of a newspaper, magazine, or similar periodical (being the right referred to in paragraph (b) of the proviso to section 8 (1) of the 1913 Act).

Cf. 1962, No. 33, First Schedule, clause 7 (2)

16. Certain literary work published before 1 April 1914—

Where a literary work—

(a) Was published before the 1st day of April 1914; and

- (b) Consists of an essay, article, or portion forming part of and first published in a review, magazine, or other periodical or work of a like nature,—

any copyright in that work under the new copyright provisions is subject to the right of the author to publish the essay, article, or portion in a separate form at the end of the period of 28 years from its first publication in a review, magazine, or other periodical or work of a like nature (being the right referred to in section 18 of the Copyright Act 1842 (U.K.)).

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 18 (U.K.); 1962, No. 33, First Schedule, clause 41

Duration of Copyright

17. Duration of copyright in works generally—

- (1) In this clause,—

“Dramatic work” includes a film of the kind to which the definition of “dramatic work” in section 2 (1) of the 1915 Act applied:

“Generated by computer”, in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work:

“Sound recording” includes a contrivance of the kind to which section 25 of the 1918 Act applied.

- (2) In relation to—

- (a) A literary, dramatic, musical, or artistic work that was generated by computer before commencement, section 22 (2) of this Act applies; and
- (b) A literary, dramatic, musical, or artistic work (other than a photograph) of joint authorship published before the 1st day of April 1963, the period of the copyright is the longer of the periods of—
- (i) The life of the author who died first and a term of 50 years after his or her death; and
 - (ii) The life of the author who died last; and
- (c) A literary, dramatic, musical, or artistic work (other than a photograph) of joint authorship made before commencement but not published before the 1st day of April 1963, section 22 (6) of this Act applies; and
- (d) A work of unknown authorship, being a literary, dramatic, musical, or artistic work (other than a photograph),—
- (i) If the work was published before commencement, subsections (3) to (5) of section 22 of this Act apply; and
 - (ii) If the work was unpublished before commencement, copyright exists until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force or, if during that period the work is first made available to the public within the meaning of subsection (4) of section 22 of this Act, the date on which copyright expires under subsection (3) of that section; and
- (e) A literary, dramatic, musical, or artistic work made before commencement, other than a work to which paragraphs (a) to (d) of this subclause or clause 18 or clause 19 of this Schedule applies, section 22 (1) of this Act applies.
- (3) If, in any case to which subclause (2) (d) (ii) of this clause applies, the identity of the author becomes known before the date on which the copyright would otherwise have expired, copyright expires in accordance with section 22 (1) of this Act.
- (4) In relation to—
- (a) A sound recording made before commencement, section 23 (1) of this Act applies; and
- (b) A cinematograph film, within the meaning of the 1962 Act, made on or after the 1st day of April 1963 and before the commencement, section 23 (1) of this Act applies; and
- (c) A broadcast made—
- (i) On or after the 1st day of April 1963 and before commencement, section 24 (1) of this Act applies:

- (ii) Before the 1st day of April 1963, section 24 (2) of this Act applies as if such a broadcast had not been made; and
- (d) The typographical arrangement of any published edition made on or after the 1st day of April 1963 and before commencement, section 25 of this Act applies; and
- (e) A work made by or under the direction or control of the Crown before commencement (other than a work to which section 27 of the Act applies), section 26 (3) of this Act applies; and
- (f) A work that was, on or after the 1st day of April 1963 and before commencement, made by an officer or employee of, or published by, an international organisation to which section 28 of this Act applies, section 28 (2) of this Act applies.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, paras. 9, 12 (3), (6) (U.K.); 1962, No. 33, First Schedule, clause 11

18. Duration of copyright in certain works made on or after 1 April 1963 and before commencement—

- (1) In relation to a literary, dramatic, musical, or artistic work (other than a photograph)—
 - (a) Made on or after the 1st day of April 1963 and before commencement; and
 - (b) The author of which died before commencement; and
 - (c) That was not, after the death of the author and before commencement, published or performed in public or included in a broadcast, or offered for sale to the public on a record,—

copyright exists until the end of the period of 75 years from the end of the calendar year in which the author died.

- (2) In relation to a literary, dramatic, musical, or artistic work (other than a photograph)—
 - (a) Made on or after the 1st day of April 1963 and before commencement; and
 - (b) The author of which died before commencement; and
 - (c) That was, after the death of the author and before commencement, published or performed in public or included in a broadcast, or offered for sale to the public on a record,—

copyright exists until the expiry of the shorter of the following periods:

- (d) 50 years from the end of the calendar year in which an act referred to in paragraph (c) of this subclause was first done;
- (e) 75 years from the end of the calendar year in which the author died.

Cf. 1962, No. 33, s. 8 (1) (b)

19. Duration of copyright in certain works made before 1 April 1963—

In relation to a literary, dramatic, or musical work or an engraving—

- (a) Made before the 1st day of April 1963; and
- (b) The author of which died before the 1st day of April 1963; and
- (c) In which copyright existed immediately before the death of the author or, where the work was of joint authorship, at or before the death of the author who died last; and
- (d) Being a literary, dramatic, or musical work or an engraving that was published, or being a dramatic or musical work that was performed in public, or being a lecture that was delivered in public after the death of the author and before the 1st day of April 1963,—

copyright exists until the end of the period of 50 years from the end of the year that includes the earliest occasion on which the work,—

- (e) Being a literary, dramatic, or musical work or an engraving, was published; or
- (f) Being a dramatic or musical work, was performed in public; or
- (g) Being a lecture, was delivered in public.

Cf. 1962, No. 33, First Schedule, clause 6

Crown Copyright

20. Crown copyright—

The provisions of section 26 of this Act apply to a work made before commencement if—

- (a) Section 52 of the 1962 Act applied to the work immediately before commencement; and
- (b) The work is not one to which section 27 of this Act applies.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 40 (U.K.)

Infringement of Copyright

21. Acts done before commencement—

The provisions of the 1962 Act that specify acts constituting infringements of copyright continue to apply in relation to acts done before commencement.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 14 (1) (U.K.)

22. Acts done after commencement—

The provisions of this Act that specify acts constituting infringements of copyright apply only in relation to acts done after commencement.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 14 (1) (U.K.)

23. Infringement by issue of copies to public—

(1) Where a person gave the notice required under the proviso to section 6 of the 1913 Act before the repeal of that section, that proviso and section 22 (1) of the 1913 Act shall, in relation to copies of the relevant work made by that person after commencement, have effect as if that proviso and section 22 (1) had been re-enacted in this Act as a proviso to section 31 of this Act.

(2) For the purposes of the operation of the proviso to section 6 of the 1913 Act,—

- (a) Any regulations made before the repeal of that section shall have effect as if they had been made under this Act; and
- (b) The power of the Governor-General in Council to make further regulations under that section shall apply as if the proviso had been re-enacted in this Act as a proviso to section 31 of this Act.

Cf. 1962, No. 33, First Schedule, clause 10

24. Importing infringing copy—

For the purposes of section 35 of this Act, if a person knows or has reason to believe that an object made before commencement and imported by that person into New Zealand after commencement would have been an infringing copy if the question had fallen to be determined under the provisions of the 1962 Act or, as the case may be, the 1913 Act, that person shall be deemed to know or to have reason to believe that the object is an infringing copy under this Act.

Cf. 1962, No. 33, First Schedule, clauses 8, 21

Acts Permitted in Relation to Copyright Works

25. Incidental copying of copyright work—

Where the acts described in section 41 (1) (b) or (c) of this Act are done after commencement, it shall be assumed that all the provisions of section 41 of this Act were in force at all material times.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 14 (4) (U.K.)

26. Acts permitted on assumptions as to expiry of copyright or death of author in relation to anonymous or pseudonymous works—

Section 67 (1) (b) (ii) of this Act applies—

- (a) To a work of unknown authorship that was unpublished before commencement, being a literary, dramatic, musical, or artistic work (other than a photograph), only after the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force; and
- (b) To a work referred to in clause 17 of this Schedule, if the work is one to which, under that clause, a section of this Act applies.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 15 (3) (U.K.)

27. Representation of certain artistic works on public display—

Where the acts described in section 73 (3) of this Act are done after commencement, it shall be assumed that all the provisions of section 73 of this Act were in force at all material times.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 14 (4) (U.K.)

Special Exceptions from Protection of Artistic Works that have been Applied Industrially

28. Artistic works made before 1 April 1963—

- (1) No copyright exists in an artistic work that—
 - (a) Was made before the 1st day of April 1963; and
 - (b) At the time when the work was made, constituted a design capable of registration under the Designs Act 1953 or under the enactments repealed by that Act; and
 - (c) Has been used as a model or pattern to be multiplied by an industrial process or is intended to be so used.
- (2) For the purposes of subclause (1) (c) of this clause, a design shall be deemed to have been used, or to be intended to be used, as a model or pattern to be multiplied by any industrial process—
 - (a) When the design is copied or is intended to be copied on more than 50 single objects, unless all the objects in which the design is copied or intended to be copied together form only a single set of articles as defined in section 2 (1) of the Designs Act 1953; or
 - (b) When the design is applied to, or is intended to be applied to,—
 - (i) Printed paper hangings; or
 - (ii) Carpets, floorcloths, or oilcloths, manufactured or sold in lengths or pieces; or
 - (iii) Textile-piece goods, or textile goods manufactured or sold in lengths or pieces; or
 - (iv) Lace, not made by hand.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 6 (U.K.); 1962, No. 33, First Schedule, clause 9

29. Literary and artistic works made on or after 1 April 1963—

- (1) Nothing in section 74 (1) of this Act shall apply to or affect—
 - (a) The settlement of any action or claim made before the commencement of the 1985 Amendment; or
 - (b) Any proceedings completed before the commencement of the 1985 Amendment; or
 - (c) Any proceedings instituted or commenced before the commencement of the 1985 Amendment in which the trial of the substantive matters in issue had commenced on or before that commencement.
- (2) Where, at commencement, a copy of a literary or artistic work exists, and the making of that copy is excluded by section 74 (2) of this Act from being authorised by section 74 (1) of this Act, that copy is not an infringing object for the purposes of this Act.
- (3) Where, at commencement, a copy of an artistic work exists, and the making of that copy is excluded by section 75 (3) of this Act from being authorised by section 75 (1) of this Act, that copy is not an infringing object for the purposes of this Act.

- (4) Where—
 - (a) An object or reproduction made pursuant to section 20B of the 1962 Act exists at commencement; and
 - (b) That object is a copy in 3 dimensions of—
 - (i) A work of artistic craftsmanship; or
 - (ii) A sculpture that is not a cast or pattern for an object that has a primarily utilitarian function; or
 - (iii) A work of architecture, being a building or a model for a building;—and that reproduction is a reproduction in 2 dimensions reasonably required for the making of the object,—

that object or copy is not an infringing object for the purposes of this Act.

Cf. 1985, No. 134, s. 4 (3)

30. Models made before the commencement of the 1985 Amendment—

Copyright does not exist by virtue of any amendment made to the 1962 Act by the 1985 Amendment in any model made before the commencement of the 1985 Amendment.

Cf. 1985, No. 134, s. 10

31. Reconstruction of buildings—

In section 78 of this Act, the reference to the owner of the copyright in the drawings or plans is, in relation to buildings constructed before commencement, to the person who at the time of the construction was the owner of the copyright in the drawings or plans under the 1962 Act, the 1913 Act, or any enactment repealed by the 1913 Act.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 14 (7) (U.K.); 1962, No. 33, First Schedule, clause 23 (2)

32. Incidental recording for purposes of broadcast or cable programme—

Section 85 of this Act does not apply where the authority to broadcast a work or include it in a cable programme was given before the 1st day of April 1963.

Cf. 1962, No. 33, First Schedule, clause 22

Moral Rights

33. Moral rights—

- (1) No act done before commencement is actionable under any provision of Part IV of this Act.
- (2) Section 62 of the 1962 Act continues to apply in relation to acts done on or after the 1st day of April 1963 and before commencement.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 22 (U.K.); 1962, No. 33, First Schedule, clause 37

34. Application of moral rights—

(1) Subject to subclause (5) of this clause, the following provisions of this clause have effect in relation to—

- (a) The rights conferred by section 94 of this Act; and
- (b) The rights conferred by section 98 of this Act.
- (2) The rights described in subclause (1) of this clause do not apply—
 - (a) In relation to a literary, dramatic, musical, or artistic work of which the author died before commencement; or
 - (b) In relation to a film made before commencement.

(3) The rights described in subclause (1) of this clause in relation to a literary, dramatic, musical, or artistic work made before commencement do not apply,—

(a) Where copyright first vested in the author, to anything that by virtue of an assignment of copyright made or licence granted before commencement may be done without infringing copyright; or

(b) Where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.

(4) The rights described in subclause (1) of this clause do not apply to anything done in relation to a record made in pursuance of sections 22 and 23 of the 1962 Act.

(5) The rights conferred by section 94 of this Act do not apply in respect of any work in which, before commencement, the copyright vested in the employer of the author or director, unless the author or director has previously been identified as such in or on published copies of the work.

(6) In this clause, the term “dramatic work” includes a film of the kind to which the definition of “dramatic work” in section 2 (1) of the 1913 Act applied.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 23 (U.K.)

35. Right to privacy of certain photographs and films—

The right conferred by section 105 of this Act does not apply to photographs taken or films made before commencement.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 24 (U.K.)

Dealing with Rights in Copyright Works

36. Licences—

Section 111 (2) of this Act does not apply in relation to an exclusive licence granted before commencement.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 29 (U.K.)

37. Documents or events before commencement—

(1) Where copyright exists in a work under the new copyright provisions, any document that—

(a) Was made before commencement; and

(b) Had any operation affecting the title to copyright in the work under the 1913 Act, or would have had such an operation if the 1913 Act had continued in force; or

(c) Had any operation affecting the title to copyright in the work under the 1962 Act or would have had such an operation if the 1962 Act had continued in force,—

shall, subject to subclause (2) of this clause, have the corresponding operation in relation to copyright in the work under the new copyright provisions.

(2) If the operation of any such document was or would have been limited to a period specified in the document, it shall not have any operation in relation to the copyright under the new copyright provisions, except in so far as that period extends beyond commencement.

(3) For the purposes of the operation of a document in accordance with subclause (1) of this clause,—

(a) Expressions used in the document shall be construed in accordance with their effect immediately before commencement, notwithstanding that a different meaning is assigned to them for the purposes of this Act; and

(b) Section 116 of this Act shall not apply in respect of any agreement made before the 1st day of April 1963.

(4) Where copyright exists in a work under the new copyright provisions, any event that—

(a) Occurred before commencement; and

(b) Had any operation affecting the title to copyright in the work under the 1913 Act, or would have had such an operation if the 1913 Act had continued in force; or

- (c) Had any operation affecting the title to copyright in the work under the 1962 Act or would have had such an operation if the 1962 Act had continued in force,—

shall have the corresponding operation in relation to copyright in the work under the new copyright provisions.

- (5) In this clause,—

“Copyright in the work under the 1913 Act” includes, in relation to a film, any copyright under the 1913 Act in the film in so far as it constituted a dramatic work for the purposes of the 1913 Act and any copyright under the 1913 Act in photographs forming part of the film:

“Operation affecting the title” means any operation affecting the ownership of that copyright, or creating, transferring, or terminating an interest, right, or licence in respect of that copyright.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, paras. 25, 26 (1) (U.K.); 1962, No. 33, First Schedule, clause 36 (1), (2), (4) (b), (5)

38. Certain assignments or licences on or after 1 April 1914 and before 1 April 1963—

(1) Where a document to which clause 37 (1) of this Schedule applies is an assignment made or a licence granted—

- (a) On or after the 1st day of April 1914 and before the 1st day of April 1963; and
(b) By the author of a literary, dramatic, musical, or artistic work, where the author is the first owner of copyright in the work; and
(c) Otherwise than by will,—

the assignment or licence shall not be operative to vest in the assignee or licensee any rights with respect to copyright in the work beyond the expiration of 25 years from the death of the author.

(2) After commencement and during the life of the author, the author may assign the reversionary interest in the copyright expectant on the termination of the period specified in subclause (1) of this clause.

(3) If the author does not make an assignment as permitted by subclause (2) of this clause, the reversionary interest in the copyright expectant on the termination of the period specified in subclause (1) of this clause shall, on the author’s death, devolve on his or her legal personal representatives as part of his or her estate.

- (4) Nothing in this clause affects—

- (a) An assignment of the reversionary interest by a person to whom it has been assigned; or
(b) An assignment of the reversionary interest after the death of the author by his or her personal representatives or any person becoming entitled to it; or
(c) Any assignment of the copyright after the reversionary interest has fallen in.

(5) Nothing in this clause applies to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

- (6) In subclause (5) of this clause, the term “collective work” means—

- (a) Any encyclopaedia, dictionary, year-book, or similar work;
(b) A newspaper, review, magazine, or similar periodical;
(c) Any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 27 (U.K.); 1962, No. 33, First Schedule, clause 36 (3)

39. Assignments or grants made before 1 April 1914—

(1) This clause applies where the author of a literary, dramatic, musical, or artistic work published before the 1st day of April 1914 assigned or granted, before the 1st day of April 1914, an interest in the copyright or performing right in the work for the full term of that right under the law in force before the 1913 Act (being such an assignment or grant as was mentioned in paragraph (a) of the proviso to section 32 (1) of the 1913 Act).

(2) If, before commencement, any thing was done in relation to the copyright in the work under paragraph (a) of the proviso to section 32 (1) of the 1913 Act, that thing has a corresponding operation under the new copyright provisions.

(3) Any right that, before commencement,—

(a) Was exercisable in relation to the work or copyright in it under paragraph (a) of the proviso to section 32 (1) of the 1913 Act; or

(b) Would have been exercisable in relation to the work or copyright in it under paragraph (a) of the proviso to section 32 (1) of the 1913 Act, if that provision had continued in force—

is exercisable in relation to the work or copyright in it under the new copyright provisions.

(4) If, in accordance with paragraph (a) of the proviso to section 32 (1) of the 1913 Act, copyright would have reverted to the author or his or her personal representatives on the date referred to in that paragraph, and that date falls after commencement, then, on that date—

(a) The copyright in the work shall revert to the author or his or her personal representatives, as the case may be; and

(b) Any interest of any other person in the copyright that exists on that date by virtue of any document made before the commencement of the 1913 Act shall cease to exist.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 28 (U.K.); 1962, No. 33, First Schedule, clause 42

40. Copyright to pass under will with unpublished works—

(1) Section 115 of this Act—

(a) Does not apply where the testator died before the 1st day of April 1963; and

(b) Where the testator died on or after that date and before commencement, applies only in relation to an original document embodying a work.

(2) In the case of an author who died before the 1st day of April 1963, the ownership after the author's death of a manuscript of the author, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work that has not been published or performed in public, is prima facie proof of the copyright being with the owner of the manuscript.

Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 30 (U.K.)

Remedies for Infringement

41. Remedies for infringement—

(1) The following provisions apply in relation to an infringement of copyright:

(a) In relation to an infringement of copyright committed after commencement, sections 20 to 122 of this Act apply:

(b) In relation to an infringement of copyright committed on or after the 1st day of April 1963 and before commencement, sections 24 and 25 of the 1962 Act and section 6 (2) of the 1985 Amendment continue to apply:

(c) In relation to an infringement of copyright committed before the 1st day of April 1963, sections 9 (1) and (2) and 10 to 13 of the 1913 Act continue to apply.

(2) The following provisions apply in relation to the rights and remedies of an exclusive licensee:

(a) Sections 123 and 124 of this Act apply where sections 120 to 122 of this Act apply:

(b) Section 26 of the 1962 Act continues to apply where sections 24 and 25 of that Act continue to apply:

(c) Sections 123 and 124 of this Act and section 26 of the 1962 Act do not apply to a licence granted before the 1st day of April 1963.

(3) The following provisions apply in relation to presumptions:

(a) Sections 126 to 129 of this Act apply only in proceedings brought under this Act:

(b) Sections 27 and 27A of the 1962 Act continue to apply to proceedings brought under that Act:



- (c) Section 9 (3) of the 1913 Act continues to apply to proceedings brought under that Act.
 - (4) The following provisions apply in relation to criminal liability for making or dealing with infringing objects:
 - (a) In relation to acts done after commencement, section 131 of this Act applies:
 - (b) In relation to acts done before commencement, including acts done before the 1st day of April 1963, section 28 of the 1962 Act continues to apply.
- Cf. Copyright, Designs and Patents Act 1988, Schedule 1, paras. 31–33 (U.K); 1962, No. 33, First Schedule, clauses 25–28

*Effect of Notices Given under Section 22 or
Section 29 of the Copyright Act 1962*

42. Records of musical works—

- (1) Where, before commencement, a person gave notice under section 22 (1) (b) of the 1962 Act of his or her intention to make or import a record of a musical work, any making or importing of the record by that person after commencement shall not be an infringement of any copyright in the musical work if the conditions set out in section 22 of the 1962 Act are fulfilled.
 - (2) The provisions of—
 - (a) Sections 22 and 23 of the 1962 Act; and
 - (b) Regulations 3 (2) and 4 to 7 of the Copyright (Record Royalties) Regulations 1963—
- that are in force immediately before commencement shall continue to apply for the purpose of completing or perfecting any matter in progress immediately before commencement.
- Cf. Copyright, Designs and Patents Act 1988, Schedule 1, para. 21 (U.K); 1962, No. 33, First Schedule, clause 24

43. Notice may be given to Comptroller of Customs—

- (1) Subject to subclause (2) of this clause, where, before commencement, a notice was given in respect of a work under section 29 of the 1962 Act, and that notice had not been withdrawn and had not otherwise ceased to have effect before commencement, the notice shall have effect after commencement as if it had been accepted under section 136 of this Act, and section 136 of this Act shall apply with any necessary modifications.
 - (2) The notice shall, upon commencement, cease to have any effect in respect of—
 - (a) Any items sold in another country by or with the consent of the owner of the copyright in that country; and
 - (b) Any items in transit to a country other than New Zealand.
- Cf. 1962, No. 33, First Schedule, clause 29

**SECOND SCHEDULE
ENACTMENTS AMENDED**

Section 236 (1)

Enactment	Amendment
1951, No. 48—The Enemy Property Act 1951 (R.S. Vol. 6, p. 317)	By repealing paragraph (j) of section 3 (2).
1953, No. 7—The Ministry of Agriculture and Fisheries Act 1953 (R.S. Vol. 18, p. 509)	By omitting from the definition of the term, “intellectual property” in section 2 (1) (as substituted by section 2 (1) of the Ministry of Agriculture and Fisheries Amendment Act 1989) the words “Copyright, Act 1962”, and substituting the words “Copyright Act 1994”.



Enactment	Amendment
<p>1957, No. 13—The Archives Act 1957 (R.S. Vol. 1, p. 127)</p>	<p>By repealing subsection (1) of section 22, and substituting the following subsection:</p> <p>“(1) Nothing in this Act shall derogate from any provision of the Copyright Act 1994 in relation to anything contained in any public archive deposited in the National Archives under this Act.”</p>
<p>1965, No. 136—The National Library Act 1965 (R.S. Vol. 11, p. 225)</p>	<p>By inserting, after section 30, the following section:</p> <p>“30A. Delivery of copies of books—</p> <p>(1) The publisher of every book that—</p> <p>“(a) Is printed in New Zealand; or</p> <p>“(b) Is commissioned to be printed outside New Zealand by a publisher resident in New Zealand or whose principal place of business is in New Zealand,—</p> <p>and in which copyright exists by virtue of the Copyright Act 1994, shall within a period of 30 days from the date of publication deliver at that person’s own expense to the National Librarian 3 copies of the book, or such lesser number of copies as the National Librarian may specify. The National Librarian shall give a written receipt for them.</p> <p>“(2) The copies delivered under subsection (1) of this section shall be copies of the whole book, with all maps and illustrations belonging to the book, finished and coloured in the same manner as the best copies of the book are published, and bound, sewed, or stitched together, and on the best paper on which the book is printed.</p> <p>“(3) Where the name of the publisher does not appear on the book, the printer (if the printer is resident in New Zealand or if his, her, or its principal place of business is in New Zealand) as well as the publisher shall be liable for a failure to comply with the provisions of this section.</p> <p>“(4) Where any copies of a book are delivered by the printer under subsection (1) of this section, the printer shall be entitled to recover from the publisher the cost of the copies.</p> <p>“(5) Notwithstanding anything to the contrary in this section, there shall be no liability to deliver copies of a second or subsequent edition of a book that is a photocopy of, or otherwise identical in content with, the first edition (or, as the case may be, the latest edition of which copies have been delivered) and does not contain any additions or alterations in letterpress or maps or illustrations belonging to the book.</p> <p>“(6) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who fails to comply with any of the provisions of this section.</p> <p>“(7) In this section,—</p> <p>“ ‘Book’ means any collection of printed sheets of paper or other substance; and includes—</p> <p>“(a) Every part or division of a book and every pamphlet, magazine, periodical, sheet of letterpress, sheet of music, map, plan, chart, art print, or table separately published; and</p> <p>“(b) Every second or subsequent edition of a book:</p> <p>“ ‘Printer’, in relation to any book, means the owner of the undertaking by which it was printed:</p> <p>“ ‘Printing’—</p>



Enactment	Amendment
<p>1975, No. 41—The Antiquities Act 1975 (R.S. Vol. 26, p. 31)</p> <p>1981, No. 35—The Public Works Act 1981</p> <p>1986, No. 5—The Commerce Act 1986 (R.S. Vol. 31, p. 71)</p> <p>1986, No. 123—The Survey Act 1986</p> <p>1988, No. 110—The Disputes Tribunals Act 1988</p> <p>1993, No. 94—The Films, Videos, and Publications Classification Act 1993</p> <p>1994, No. 116—The Layout Designs Act 1994</p>	<p>“(a) Includes the production of copies by any duplicating process, whether letterpress, lithographic, photographic, stencilling, xerographic, or otherwise; but</p> <p>“(b) Does not include typewriting;—</p> <p>and ‘printed’ has a corresponding meaning:</p> <p>“ ‘Publication’ has the same meaning as it has in 10 of the Copyright Act 1994.”</p> <p>By omitting from section 8 (2) the words “Copyright Act 1962”, and substituting the words “Copyright Act 1994”.</p> <p>By omitting from the definition of the term “intellectual property” in section 2 (as that definition was inserted by section 2 (3) of the Public Works Amendment Act (No. 2) 1987) the words “Copyright Act 1962”, and substituting the words “Copyright Act 1994”.</p> <p>By repealing paragraph (d) of section 45 (2) (as substituted by section 42 of the Layout Designs Act 1994), and substituting the following paragraph:</p> <p>“(d) The Copyright Act 1994; or”.</p> <p>By omitting from paragraph (i) of section 11x the words “Copyright Act 1962”, and substituting the words “Copyright Act 1994”.</p> <p>By omitting from the definition of the term “intellectual property” in section 2 the words “Copyright Act 1962”, and substituting the words “Copyright Act 1994”.</p> <p>By omitting from paragraph (k) of section 131 (4) the words “section 64 of the Copyright Act 1962”, and substituting the words “section 30A of the National Library Act 1965”.</p> <p>By omitting from paragraph (f) of section 131 (5) the words “section 64 of the Copyright Act 1962”, and substituting the words “section 30A of the National Library Act 1965”.</p> <p>By omitting from the definition of the term “Copyright Tribunal” in section 2 the words “Part V of the Copyright Act 1962”, and substituting the words “Part X of the Copyright Act 1994”.</p> <p>By omitting from section 19 (2) the words “Notwithstanding subsections (2) and (3) of section 10 of the Copyright Act 1962 to the extent that those subsections apply to imported articles,”, and substituting the words “Notwithstanding sections 12 (3), 35, and 36 of the Copyright Act 1994 to the extent that those provisions apply to imported articles,”.</p> <p>By omitting from section 19 (3) the words “Copyright Act 1962”, and substituting the words “Copyright Act 1994”.</p> <p>By repealing section 41.</p>

THIRD SCHEDULE ENACTMENTS REPEALED

Section 236 (2)

1957, No. 87—The Summary Proceedings Act 1957: So much of the First Schedule as relates to the Copyright Act 1962.

1962, No. 33—The Copyright Act 1962.



1964, No. 27—The Decimal Currency Act 1964: So much of the Fifth Schedule as relates to the Copyright Act 1962.

1967, No. 65—The Copyright Amendment Act 1967.

1971, No. 91—The Copyright Amendment Act 1971.

1985, No. 134—The Copyright Amendment Act 1985.

1986, No. 81—The Copyright Amendment Act 1986.

1989, No. 25—The Broadcasting Act 1989: Section 89 (2) (a); and so much of the Second Schedule as relates to the Copyright Act 1962.

1989, No. 112—The Copyright Amendment Act 1989.

1990, No. 71—The Copyright Amendment Act 1990.

FOURTH SCHEDULE REGULATIONS REVOKED

Section 236 (3)

Title	Gazette Reference or Statutory Regulations Serial Number
The Copyright Regulations 1913	<i>Gazette</i> , 1914, Vol. I, p. 1325
Works the Importation of which is prohibited under the Copyright Act, 1913	<i>Gazette</i> , 1925, Vol. I, p. 16
The Copyright Amending Regulations 1946	1946/142
The Copyright Amending Regulations 1955	1955/45
The Copyright (Record Royalties) Regulations 1963	1963/84
The Copyright (Customs) Regulations 1963	1963/85
The Copyright (International Conventions) Order 1964	1964/53
The Copyright (International Conventions) Order 1964, Amendment No. 1	1979/64

This Act is administered in the Department of Justice.

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