Intellectual Property Office

Copyright, Designs and Patents Act 1988

Intellectual Property Office is an operating name of the Patent Office

Copyright, Designs and Patents Act 1988

As amended by the legislation indicated overleaf

Status of this document

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This text reproduces the provisions of Part I (Copyright), Part II (Rights in Performances) and Part VII (Miscellaneous and General) of the 1988 Act, and relevant Schedules to the Act, as amended or introduced by the following legislation : -

National Health Service and Community Care Act 1990

Broadcasting Act 1990

Courts and Legal Services Act 1990

Health and Personal Social Services (Northern Ireland) Order 1991, SI 1991/194 (N.I.1)

High Court and County Courts Jurisdiction Order 1991, SI 1991/724 (L.5)

Copyright (Computer Programs) Regulations 1992, SI 1992/3233

Judicial Pensions and Retirement Act 1993

Charities Act 1993

Trade Marks Act 1994

Criminal Justice (Northern Ireland) Order 1994, SI 1994/2795 (N.I.15)

Criminal Justice and Public Order Act 1994

Copyright (EC Measures Relating to Pirated Goods and Abolition of Restrictions on the Import of Goods) Regulations 1995, SI 1995/1445

Merchant Shipping Act 1995

Criminal Procedure (Consequential Provisions) (Scotland) Act 1995

Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297

Arbitration Act 1996

Broadcasting Act 1996

Education Act 1996

Copyright and Related Rights Regulations 1996, SI 1996/2967

Copyright and Rights in Databases Regulations 1997, SI 1997/3032

Government of Wales Act 1998

Competition Act 1998

Northern Ireland Act 1998

Scotland Act 1998

Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506

Health Act 1999 (Supplementary and Consequential Provisions) Order 1999, SI 1999/2795

Health Act 1999 (Supplementary, Consequential etc. Provisions) Order 2000, SI 2000/90

Powers of Criminal Courts (Sentencing Act) 2000

Conditional Access (Unauthorised Decoders) Regulations 2000, SI 2000/1175

Registered Designs Regulations 2001, SI 2001/3949

Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002

Copyright (Visually Impaired Persons) Act 2002

Enterprise Act 2002

Communications Act 2003

Copyright and Related Rights Regulations 2003, SI 2003/2498

Legal Deposit Libraries Act 2003

Health and Social Care (Community Health and Standards Act) 2003

Serious Organised Crime and Police Act 2005

The Performances (Moral Rights etc) Regulations 2006

The Intellectual Property (Enforcement, etc.) Regulations 2006

Government of Wales Act 2006

The Criminal Justice and Public Order Act 1994 (Commenct. No. 14) Order 2007

The Parliamentary Copyright (National Assembly for Wales) Order 2007

The Digital Economy Act 2010

The Copyright, Designs and Patents Act 1988 (Amendment) Regulations 2010

The Enterprise and Regulatory Reform Act 2013

The Copyright and Duration of Rights in Performances Regulations 2013

The Copyright and Duration of Rights in Performances Regulations (amendment) 2014

The Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014

The Copyright (Public Administration) Regulations 2014

The Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014

The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014

The Copyright and Rights in Performances (Disability) Regulations 2014

The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014

Intellectual Property Act 2014

Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

An Act to restate the law of copyright, with amendments; to make fresh provision as to the rights of performers and others in performances; to confer a design right in original designs; to amend the Registered Designs Act 1949; to make provision with respect to patent agents and trade mark agents; to confer patents and designs jurisdiction on certain county courts; to amend the law of patents; to make provision with respect to devices designed to circumvent copy-protection of works in electronic form; to make fresh provision penalising the fraudulent reception of transmissions; to make the fraudulent application or use of a trade mark an offence; to make provision for the benefit of the Hospital for Sick Children, Great Ormond Street, London; to enable financial assistance to be given to certain international bodies; and for connected purposes

15th November 1988

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

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Part I Copyright

Chapter I

Subsistence, ownership and duration of copyright

Introductory

1 Copyright and copyright works

(1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work--

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

(b) sound recordings, films or broadcasts, and

(c) the typographical arrangement of published editions.

(2) In this Part "copyright work" means a work of any of those descriptions in which copyright subsists.

(3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection are met (see section 153 and the provisions referred to there).

2 Rights subsisting in copyright works

(1) The owner of the copyright in a work of any description has the exclusive right to do the acts specified in Chapter II as the acts restricted by the copyright in a work of that description.

(2) In relation to certain descriptions of copyright work the following rights conferred by Chapter IV (moral rights) subsist in favour of the author, director or commissioner of the work, whether or not he is the owner of the copyright--

(a) section 77 (right to be identified as author or director),

(b) section 80 (right to object to derogatory treatment of work), and

(c) section 85 (right to privacy of certain photographs and films).

Descriptions of work and related provisions

3 Literary, dramatic and musical works

(1) In this Part--

"literary work" means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes--

(a) a table or compilation other than a database,

(b) a computer program,

(c) preparatory design material for a computer program and

(d) a database;

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

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

(2) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise; and references in this Part to the time at which such a work is made are to the time at which it is so recorded.

(3) It is immaterial for the purposes of subsection (2) whether the work is recorded by or with the permission of the author; and where it is not recorded by the author, nothing in that subsection affects the question whether copyright subsists in the record as distinct from the work recorded.

3A Databases

(1) In this Part "database" means a collection of independent works, data or other materials which--

(a) are arranged in a systematic or methodical way, and

(b) are individually accessible by electronic or other means.

(2) For the purposes of this Part a literary work consisting of a database is original if, and only if, by reason of the selection or arrangement of the contents of the database the database constitutes the author's own intellectual creation.

4 Artistic works

(1) In this Part "artistic work" means--

(a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,

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

(c) a work of artistic craftsmanship.

(2) In this Part--

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

"graphic work" includes--

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

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

"photograph" means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;

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

5A Sound recordings

(1) In this Part "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.

(2) Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording.

5B Films

(1) In this Part "film" means a recording on any medium from which a moving image may by any means be produced.

(2) The sound track accompanying a film shall be treated as part of the film for the purposes of this Part.

(3) Without prejudice to the generality of subsection (2), where that subsection applies--

(a) references in this Part to showing a film include playing the film sound track to accompany the film,

(b) references in this Part to playing a sound recording, or to communicating a sound recording to the public, do not include playing or communicating the film sound track to accompany the film,

(c) references in this Part to copying a work, so far as they apply to a sound recording, do not include copying the film sound track to accompany the film, and

(d) references in this Part to the issuing, rental or lending of copies of a work, so far as they apply to a sound recording, do not include the issuing, rental or lending of copies of the sound track to accompany the film.

(4) Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film.

(5) Nothing in this section affects any copyright subsisting in a film sound track as a sound recording.

6 Broadcasts

(1) In this Part a "broadcast" means an electronic transmission of visual images, sounds or other information which--

(a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or

(b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public,

and which is not excepted by subsection (1A); and references to broadcasting shall be construed accordingly.

(1A) Excepted from the definition of "broadcast" is any internet transmission unless it is--

(a) a transmission taking place simultaneously on the internet and by other means,

(b) a concurrent transmission of a live event, or

(c) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person.

(2) 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.

(3) References in this Part to the person making a broadcast or a transmission which is a broadcast are--

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

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

and references in this Part to a programme, in the context of broadcasting, are to any item included in a broadcast.

(4) For the purposes of this Part, the place from which a wireless broadcast is made is the place where, under the control and responsibility of the person making the broadcast, the programme-carrying signals are introduced into an uninterrupted chain of communication (including, in the case of a satellite transmission, the chain leading to the satellite and down towards the earth).

(4A) Subsections (3) and (4) have effect subject to section 6A (safeguards in case of certain satellite broadcasts).

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

(5A) The relaying of a broadcast by reception and immediate re-transmission shall be regarded for the purposes of this Part as a separate act of broadcasting from the making of the broadcast which is so re-transmitted.

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

6A Safeguards in relation to certain satellite broadcasts

(1) This section applies where the place from which a broadcast by way of satellite transmission is made is located in a country other than an EEA State and the law of that country fails to provide at least the following level of protection--

(a) exclusive rights in relation to wireless broadcasting equivalent to those conferred by section 20 (infringement by communication to the public) on the authors of literary, dramatic, musical and artistic works, films and broadcasts;

(b) a right in relation to live wireless broadcasting equivalent to that conferred on a performer by section 182(1)(b) (consent required for live broadcast of performance); and

(c) a right for authors of sound recordings and performers to share in a single equitable remuneration in respect of the wireless broadcasting of sound recordings.

(2) Where the place from which the programme-carrying signals are transmitted to the satellite ("the uplink station") is located in an EEA State--

(a) that place shall be treated as the place from which the broadcast is made, and

(b) the person operating the uplink station shall be treated as the person making the broadcast.

(3) Where the uplink station is not located in an EEA State but a person who is established in an EEA State has commissioned the making of the broadcast--

(a) that person shall be treated as the person making the broadcast, and

(b) the place in which he has his principal establishment in the European Economic Area shall be treated as the place from which the broadcast is made.

8 Published editions

(1) In this Part "published edition", in the context of copyright in the typographical arrangement of a published edition, means a published edition of the whole or any part of one or more literary, dramatic or musical works.

(2) Copyright does not subsist in the typographical arrangement of a published edition if, or to the extent that, it reproduces the typographical arrangement of a previous edition.

Authorship and ownership of copyright

9 Authorship of work

(1) In this Part "author", in relation to a work, means the person who creates it.

(2) That person shall be taken to be--

(aa) in the case of a sound recording, the producer;

(ab) in the case of a film, the producer and the principal director;

(b) in the case of a broadcast, the person making the broadcast (see section 6(3)) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;

[(c)]

(d) in the case of the typographical arrangement of a published edition, the publisher.

(3) In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.

(4) For the purposes of this Part 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.

(5) For the purposes of this Part the identity of an author shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if his identity is once known it shall not subsequently be regarded as unknown.

10 Works of joint authorship

(1) In this Part a "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.

(1A) A film shall be treated as a work of joint authorship unless the producer and the principal director are the same person.

(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 (see section 6(3)).

(3) References in this Part to the author of a work shall, except as otherwise provided, be construed in relation to a work of joint authorship as references to all the authors of the work.

10A Works of co-authorship

(1) In this Part a "work of co-authorship" means a work produced by the collaboration of the author of a musical work and the author of a literary work where the two works are created in order to be used together.

(2) References in this Part to a work or the author of a work shall, except as otherwise provided, be construed in relation to a work of co-authorship as references to each of the separate musical and literary works comprised in the work of co-authorship and to each of the authors of such works.

11 First ownership of copyright

(1) The author of a work is the first owner of any copyright in it, subject to the following provisions.

(2) Where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.

(3) This section does not apply to Crown copyright or Parliamentary copyright (see sections 163 and 165) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations).

Duration of copyright

12 Duration of copyright in literary, dramatic, musical or artistic works

(1) The following provisions have effect with respect to the duration of copyright in a literary, dramatic, musical or artistic work.

(2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the author dies, subject as follows.

(3) If the work is of unknown authorship, copyright expires--

(a) at the end of the period of 70 years from the end of the calendar year in which the work was made, or

(b) if during that period the work is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available,

subject as follows.

(4) Subsection (2) applies if the identity of the author becomes known before the end of the period specified in paragraph (a) or (b) of subsection (3).

(5) For the purposes of subsection (3) making available to the public includes--

(a) in the case of a literary, dramatic or musical work--

(i) performance in public, or

(ii) communication to the public;

(b) in the case of an artistic work--

(i) exhibition in public,

(ii) a film including the work being shown in public, or

(iii) communication to the public;

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.

(6) Where the country of origin of the work is not an EEA state and the author of the work is not a national of an EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (5).

(7) If the work is computer-generated the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.

(8) The provisions of this section are adapted as follows in relation to a work of joint authorship or a work of co-authorship--

(a) the reference in subsection (2) to the death of the author shall be construed--

(i) if the identity of all the authors is known, as a reference to the death of the last of them to die, and

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

(b) the reference in subsection (4) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known;

(c) the reference in subsection (6) to the author not being a national of an EEA state shall be construed as a reference to none of the authors being a national of an EEA state.

(9) This section does not apply to Crown copyright or Parliamentary copyright (see sections 163 to 166D) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations).

13A Duration of copyright in sound recordings

(1) The following provisions have effect with respect to the duration of copyright in a sound recording.

(2) Subject to subsections (4) and (5) and section 191HA(4), copyright expires--

(a) at the end of the period of 50 years from the end of the calendar year in which the recording is made, or

(b) if during that period the recording is published, 70 years from the end of the calendar year in which it is first published, or

(c) if during that period the recording is not published but is made available to the public by being played in public or communicated to the public, 70 years from the end of the calendar year in which it is first so made available,

but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorised act.

(4) Where the author of a sound recording is not a national of an EEA state, the duration of copyright is that to which the sound recording is entitled in the country of which the author is a national, provided that does not exceed the period which would apply under subsection (2).

(5) If or to the extent that the application of subsection (4) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of copyright shall be as specified in subsection (2).

13B Duration of copyright in films

(1) The following provisions have effect with respect to the duration of copyright in a film.

(2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the death occurs of the last to die of the following persons--

(a) the principal director,

(b) the author of the screenplay,

(c) the author of the dialogue, or

(d) the composer of music specially created for and used in the film;

subject as follows.

(3) If the identity of one or more of the persons referred to in subsection (2)(a) to (d) is known and the identity of one or more others is not, the reference in that subsection to the death of the last of them to die shall be construed as a reference to the death of the last whose identity is known.

(4) If the identity of the persons referred to in subsection (2)(a) to (d) is unknown, copyright expires at--

(a) the end of the period of 70 years from the end of the calendar year in which the film was made, or

(b) if during that period the film is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available.

(5) Subsections (2) and (3) apply if the identity of any of those persons becomes known before the end of the period specified in paragraph (a) or (b) of subsection (4).

(6) For the purposes of subsection (4) making available to the public includes--

(a) showing in public, or

(b) communicating to the public;

but in determining generally for the purposes of that subsection whether a film has been made available to the public no account shall be taken of any unauthorised act.

(7) Where the country of origin is not an EEA state and the author of the film is not a national of an EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (6).

(8) In relation to a film of which there are joint authors, the reference in subsection (7) to the author not being a national of an EEA state shall be construed as a reference to none of the authors being a national of an EEA state.

(9) If in any case there is no person falling within paragraphs (a) to (d) of subsection (2), the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the film was made.

(10) For the purposes of this section the identity of any of the persons referred to in subsection (2)(a) to (d) shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if the identity of any such person is once known it shall not subsequently be regarded as unknown.

14 Duration of copyright in broadcasts

(1) The following provisions have effect with respect to the duration of copyright in a broadcast .

(2) Copyright in a broadcast expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made, subject as follows.

(3) Where the author of the broadcast is not a national of an EEA state, the duration of copyright in the broadcast is that to which it is entitled in the country of which the author is a national, provided that does not exceed the period which would apply under subsection (2).

(4) If or to the extent that the application of subsection (3) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of copyright shall be as specified in subsection (2).

(5) Copyright in a repeat broadcast expires at the same time as the copyright in the original broadcast . . .; and accordingly no copyright arises in respect of a repeat broadcast which is broadcast after the expiry of the copyright in the original broadcast.

(6) A repeat broadcast means one which is a repeat of a broadcast previously made.

15 Duration of copyright in typographical arrangement of published editions

Copyright in the 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 was first published.

15A Meaning of country of origin

(1) For the purposes of the provisions of this Part relating to the duration of copyright the country of origin of a work shall be determined as follows.

(2) If the work is first published in a Berne Convention country and is not simultaneously published elsewhere, the country of origin is that country.

(3) If the work is first published simultaneously in two or more countries only one of which is a Berne Convention country, the country of origin is that country.

(4) If the work is first published simultaneously in two or more countries of which two or more are Berne Convention countries, then--

(a) if any of those countries is an EEA state, the country of origin is that country; and

(b) if none of those countries is an EEA state, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection.

(5) If the work is unpublished or is first published in a country which is not a Berne Convention country (and is not simultaneously published in a Berne Convention country), the country of origin is--

(a) if the work is a film and the maker of the film has his headquarters in, or is domiciled or resident in a Berne Convention country, that country;

(b) if the work is--

(i) a work of architecture constructed in a Berne Convention country, or

(ii) an artistic work incorporated in a building or other structure situated in a Berne Convention country,

that country;

(c) in any other case, the country of which the author of the work is a national.

(6) In this section--

(a) a "Berne Convention country" means a country which is a party to any Act of the International Convention for the Protection of Literary and Artistic Works signed at Berne on 9th September 1886; and

(b) references to simultaneous publication are to publication within 30 days of first publication.

Chapter II

Rights of Copyright Owner

The acts restricted by copyright

16 The acts restricted by copyright in a work

(1) The owner of the copyright in a work has, in accordance with the following provisions of this Chapter, the exclusive right to do the following acts in the United Kingdom--

(a) to copy the work (see section 17);

(b) to issue copies of the work to the public (see section 18);

(ba) to rent or lend the work to the public (see section 18A);

(c) to perform, show or play the work in public (see section 19);

(d) to communicate the work to the public (see section 20);

(e) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 21);

and those acts are referred to in this Part as the "acts restricted by the copyright".

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by the copyright.

(3) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of it--

(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.

(4) This Chapter has effect subject to--

(a) the provisions of Chapter III (acts permitted in relation to copyright works), and

(b) the provisions of Chapter VII (provisions with respect to copyright licensing).

17 Infringement of copyright by copying

(1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies shall be construed as follows.

(2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form.

This includes storing the work in any medium by electronic means.

(3) In relation to an artistic work copying includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work.

(4) Copying in relation to a film or broadcast includes making a photograph of the whole or any substantial part of any image forming part of the film or broadcast.

(5) Copying in relation to the typographical arrangement of a published edition means making a facsimile copy of the arrangement.

(6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.

18 Infringement by issue of copies to the public

(1) The issue to the public of copies of the work is an act restricted by the copyright in every description of copyright work.

(2) References in this Part to the issue to the public of copies of a work are to--

(a) the act of putting into circulation in the EEA copies not previously put into circulation in the EEA by or with the consent of the copyright owner, or

(b) the act of putting into circulation outside the EEA copies not previously put into circulation in the EEA or elsewhere.

(3) References in this Part to the issue to the public of copies of a work do not include--

(a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see section 18A: infringement by rental or lending), or

(b) any subsequent importation of such copies into the United Kingdom or another EEA state,

except so far as paragraph (a) of subsection (2) applies to putting into circulation in the EEA copies previously put into circulation outside the EEA.

(4) References in this Part to the issue of copies of a work include the issue of the original.

18A Infringement by rental or lending of work to the public

(1) The rental or lending of copies of the work to the public is an act restricted by the copyright in--

(a) a literary, dramatic or musical work,

(b) an artistic work, other than--

(i) a work of architecture in the form of a building or a model for a building, or

(ii) a work of applied art, or

(c) a film or a sound recording.

(2) In this Part, subject to the following provisions of this section--

(a) "rental" means making a copy of the work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage, and

(b) "lending" means making a copy of the work available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public.

(3) The expressions "rental" and "lending" do not include--

(a) making available for the purpose of public performance, playing or showing in public or communication to the public;

(b) making available for the purpose of exhibition in public; or

(c) making available for on-the-spot reference use.

(4) The expression "lending" does not include making available between establishments which are accessible to the public.

(5) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.

(6) References in this Part to the rental or lending of copies of a work include the rental or lending of the original.

19 Infringement by performance, showing or playing of work in public

(1) The performance of the work in public is an act restricted by the copyright in a literary, dramatic or musical work.

(2) In this Part "performance", in relation to a work--

(a) includes delivery in the case of lectures, addresses, speeches and sermons, and

(b) in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording, film or broadcast of the work.

(3) The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film or broadcast.

(4) Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds conveyed by electronic means, the person by whom the visual images or sounds are sent, and in the case of a performance the performers, shall not be regarded as responsible for the infringement.

20 Infringement by communication to the public

(1) The communication to the public of the work is an act restricted by the copyright in--

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

(b) a sound recording or film, or

(c) a broadcast.

(2) References in this Part to communication to the public are to communication to the public by electronic transmission, and in relation to a work include--

(a) the broadcasting of the work;

(b) the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

21 Infringement by making adaptation or act done in relation to adaptation

(1) The making of an adaptation of the work is an act restricted by the copyright in a literary, dramatic or musical work.

For this purpose an adaptation is made when it is recorded, in writing or otherwise.

(2) The doing of any of the acts specified in sections 17 to 20, or subsection (1) above, in relation to an adaptation of the work is also an act restricted by the copyright in a literary, dramatic or musical work.

For this purpose it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.

(3) In this Part "adaptation"--

(a) in relation to a literary work, other than a computer program or a database, or in relation to a dramatic work, means--

(i) a translation of the work;

(ii) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work;

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

(ab) in relation to a computer program, means an arrangement or altered version of the program or a translation of it;

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

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

(4) In relation to a computer program a "translation" 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.

(5) No inference shall be drawn from this section as to what does or does not amount to copying a work.

Secondary infringement of copyright

22 Secondary infringement: importing infringing copy

The copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into the United Kingdom, otherwise than for his private and domestic use, an article which is, and which he knows or has reason to believe is, an infringing copy of the work.

23 Secondary infringement: possessing or dealing with infringing copy

The copyright in a work is infringed by a person who, without the licence of the copyright owner--

(a) possesses in the course of a business,

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

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

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

an article which is, and which he knows or has reason to believe is, an infringing copy of the work.

24 Secondary infringement: providing means for making infringing copies

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

(a) makes,

(b) imports into the United Kingdom,

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

(d) sells or lets for hire, or offers or exposes for sale or hire,

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

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner transmits the work by means of a telecommunications system (otherwise than by communication to the public), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in the United Kingdom or elsewhere.

25 Secondary infringement: permitting use of premises for infringing performance

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

(2) In this section "place of public entertainment" includes premises which are occupied mainly for other purposes but are from time to time made available for hire for the purposes of public entertainment.

26 Secondary infringement: provision of apparatus for infringing performance, &c

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

(a) playing sound recordings,

(b) showing films, or

(c) receiving visual images or sounds conveyed by electronic means,

the following persons 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 supplied the apparatus or part--

(a) he 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 public performance, playing or showing, he did not believe on reasonable grounds that it 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 he gave permission he 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 he supplied it he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.

Infringing copies

27 Meaning of "infringing copy"

(1) In this Part "infringing copy", in relation to a copyright work, shall be construed in accordance with this section.

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

(3) an article is also an infringing copy if--

(a) it has been or is proposed to be imported into the United Kingdom, and

(b) its making in the United Kingdom would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.

(4) Where in any proceedings the question arises whether an article is an infringing copy and it is shown--

(a) that the article is a copy of the work, and

(b) that copyright subsists in the work or has subsisted at any time,

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

(5) Nothing in subsection (3) shall be construed as applying to an article which may lawfully be imported into the United Kingdom by virtue of any enforceable EU right within the meaning of section 2(1) of the European Communities Act 1972.

(6) In this Part "infringing copy" includes a copy falling to be treated as an infringing copy by virtue of any of the following provisions--

section 28B(7) and (9) (personal copies for private use),

section 29A(3) (copies for text and data analysis for non-commercial research),

section 31A(5) and (6) (disabled persons: copies of works for personal use),

section 31B(11) (making and supply of accessible copies by authorised bodies),

section 35(5) (recording by educational establishments of broadcasts),

section 36(8) (copying and use of extracts of works by educational establishments),

section 42A(5)(b) (copying by librarians: single copies of published works),

section 43(5)(b) (copying by librarians or archivists: single copies of unpublished works),

section 56(2) (further copies, adaptations, &c of work in electronic form retained on transfer of principal copy),

section 61(6)(b) (recordings of folksongs),

section 63(2) (copies made for purpose of advertising artistic work for sale),

section 63(2) (copies made for purpose of advertising artistic work for sale),

section 68(4) (copies made for purpose of broadcast),

section 70(2) (recording for the purposes of time-shifting),

section 71(2) (photographs of broadcasts), or

any provision of an order under section 141 (statutory licence for certain reprographic copying by educational establishments).

Chapter III

Acts Permitted in relation to Copyright Works

Introductory

28 Introductory provisions

(1) The provisions of this Chapter specify acts which may be done in relation to copyright works notwithstanding the subsistence of copyright; they relate only to the question of infringement of copyright and do not affect any other right or obligation restricting the doing of any of the specified acts.

(2) Where it is provided by this Chapter that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe the copyright in a work of any description.

(3) No inference shall be drawn from the description of any act which may by virtue of this Chapter be done without infringing copyright as to the scope of the acts restricted by the copyright in any description of work.

(4) The provisions of this Chapter are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

General

28A Making of temporary copies

Copyright in a literary work, other than a computer program or a database, or in a dramatic, musical or artistic work, the typographical arrangement of a published edition, a sound recording or a film, is not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable--

(a) a transmission of the work in a network between third parties by an intermediary; or

(b) a lawful use of the work;

and which has no independent economic significance.

28B Personal copies for private use

(1) The making of a copy of a work, other than a computer program, by an individual does not infringe copyright in the work provided that the copy—

(a) is a copy of—

(i) the individual's own copy of the work, or

(ii) a personal copy of the work made by the individual,

(b) is made for the individual's private use, and

(c) is made for ends which are neither directly nor indirectly commercial.

(2) In this section "the individual's own copy" is a copy which—

(a) has been lawfully acquired by the individual on a permanent basis,

(b) is not an infringing copy, and

(c) has not been made under any provision of this Chapter which permits the making of a copy without infringing copyright.

(3) In this section a "personal copy" means a copy made under this section.

(4) For the purposes of subsection (2)(a), a copy "lawfully acquired on a permanent basis"—

(a) includes a copy which has been purchased, obtained by way of a gift, or acquired by means of a download resulting from a purchase or a gift (other than a download of a kind mentioned in paragraph (b)); and

(b) does not include a copy which has been borrowed, rented, broadcast or streamed, or a copy which has been obtained by means of a download enabling no more than temporary access to the copy.

(5) In subsection (1)(b) "private use" includes private use facilitated by the making of a copy—

(a) as a back up copy,

(b) for the purposes of format-shifting, or

(c) for the purposes of storage, including in an electronic storage area accessed by means of the internet or similar means which is accessible only by the individual (and the person responsible for the storage area).

(6) Copyright in a work is infringed if an individual transfers a personal copy of the work to another person (otherwise than on a private and temporary basis), except where the transfer is authorised by the copyright owner.

(7) If copyright is infringed as set out in subsection (6), a personal copy which has been transferred is for all purposes subsequently treated as an infringing copy.

(8) Copyright in a work is also infringed if an individual, having made a personal copy of the work, transfers the individual's own copy of the work to another person (otherwise than on a private and temporary basis) and, after that transfer and without the licence of the copyright owner, retains any personal copy.

(9) If copyright is infringed as set out in subsection (8), any retained personal copy is for all purposes subsequently treated as an infringing copy.

(10) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable.

29 Research and private study

(1) Fair dealing with a work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

(1B) No acknowledgement is required in connection with fair dealing for the purposes mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.

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

(3) Copying by a person other than the researcher or student himself is not fair dealing if--

(a) in the case of a librarian, or a person acting on behalf of a librarian, that person does anything which is not permitted under section 42A (copying by librarians: single copies of published works), or

(b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

(4) It is not fair dealing--

(a) to convert a computer program expressed in a low level language into a version expressed in a higher level language, or

(b) incidentally in the course of so converting the program, to copy it,

(these acts being permitted if done in accordance with section 50B (decompilation)).

(4A) It is not fair dealing to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program (these acts being permitted if done in accordance with section 50BA (observing, studying and testing)).

(4B) To the extent that a term of any contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

29A Copies for text and data analysis for non-commercial research

(1) The making of a copy of a work by a person who has lawful access to the work does not infringe copyright in the work provided that—

(a) the copy is made in order that a person who has lawful access to the work may carry out a computational analysis of anything recorded in the work for the sole purpose of research for a non-commercial purpose, and

(b) the copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) Where a copy of a work has been made under this section, copyright in the work is infringed if—

(a) the copy is transferred to any other person, except where the transfer is authorised by the copyright owner, or

(b) the copy is used for any purpose other than that mentioned in subsection (1)(a), except where the use is authorised by the copyright owner.

(3) If a copy made under this section is subsequently dealt with—

(a) it is to be treated as an infringing copy for the purposes of that dealing, and

(b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

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

(5) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable.

30 Criticism, review, quotation and news reporting

(1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise) and provided that the work has been made available to the public.

(1ZA) Copyright in a work is not infringed by the use of a quotation from the work (whether for criticism or review or otherwise) provided that—

(a) the work has been made available to the public,

(b) the use of the quotation is fair dealing with the work,

(c) the extent of the quotation is no more than is required by the specific purpose for which it is used, and

(d) the quotation is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(1A) For the purposes of subsections (1) and (1ZA) a work has been made available to the public if it has been made available by any means, including--

(a) the issue of copies to the public;

(b) making the work available by means of an electronic retrieval system;

(c) the rental or lending of copies of the work to the public;

(d) the performance, exhibition, playing or showing of the work in public;

(e) the communication to the public of the work,

but in determining generally for the purposes of those subsections whether a work has been made available to the public no account shall be taken of any unauthorised act.

(2) Fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work provided that (subject to subsection (3)) it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film or broadcast where this would be impossible for reasons of practicality or otherwise.

(4) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of subsection (1ZA), would not infringe copyright, that term is unenforceable.

30A Caricature, parody or pastiche

(1) Fair dealing with a work for the purposes of caricature, parody or pastiche does not infringe copyright in the work.

(2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

31 Incidental inclusion of copyright material

(1) Copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, film or broadcast.

(2) Nor is the copyright infringed by the issue to the public of copies, or the playing, showing or communication to the public, of anything whose making was, by virtue of subsection (1), not an infringement of the copyright.

(3) A musical work, words spoken or sung with music, or so much of a sound recording or broadcast as includes a musical work or such words, shall not be regarded as incidentally included in another work if it is deliberately included.

Disability

31A Disabled persons: copies of works for personal use

(1) This section applies if—

(a) a disabled person has lawful possession or lawful use of a copy of the whole or part of a work, and

(b) the person's disability prevents the person from enjoying the work to the same degree as a person who does not have that disability.

(2) The making of an accessible copy of the copy of the work referred to in subsection (1)(a) does not infringe copyright if—

(a) the copy is made by the disabled person or by a person acting on behalf of the disabled person,

(b) the copy is made for the disabled person's personal use, and

(c) the same kind of accessible copies of the work are not commercially available on reasonable terms by or with the authority of the copyright owner.

(3) If a person makes an accessible copy under this section on behalf of a disabled person and charges the disabled person for it, the sum charged must not exceed the cost of making and supplying the copy.

(4) Copyright is infringed by the transfer of an accessible copy of a work made under this section to any person other than—

(a) a person by or for whom an accessible copy of the work may be made under this section, or

(b) a person who intends to transfer the copy to a person falling within paragraph (a),

except where the transfer is authorised by the copyright owner.

(5) An accessible copy of a work made under this section is to be treated for all purposes as an infringing copy if it is held by a person at a time when the person does not fall within subsection (4)(a) or (b).

(6) If an accessible copy made under this section is subsequently dealt with—

(a) it is to be treated as an infringing copy for the purposes of that dealing, and

(b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

(7) In this section "dealt with" means sold or let for hire or offered or exposed for sale or hire.

31B Making and supply of accessible copies by authorised bodies

(1) If an authorised body has lawful possession of a copy of the whole or part of a published work, the body may, without infringing copyright, make and supply accessible copies of the work for the personal use of disabled persons.

(2) But subsection (1) does not apply if the same kind of accessible copies of the work are commercially available on reasonable terms by or with the authority of the copyright owner.

(3) If an authorised body has lawful access to or lawful possession of the whole or part of a broadcast or a copy of a broadcast, the body may, without infringing copyright—

(a) in the case of a broadcast, make a recording of the broadcast, and make and supply accessible copies of the recording or of any work included in the broadcast, and

(b) in the case of a copy of a broadcast, make and supply accessible copies of that copy or of any work included in the broadcast,

for the personal use of disabled persons.

(4) But subsection (3) does not apply if the same kind of accessible copies of the broadcast, or of any work included in it, are commercially available on reasonable terms by or with the authority of the copyright owner.

(5) For the purposes of subsections (1) and (3), supply "for the personal use of disabled persons" includes supply to a person acting on behalf of a disabled person.

(6) An authorised body which is an educational establishment conducted for profit must ensure that any accessible copies which it makes under this section are used only for its educational purposes.

(7) An accessible copy made under this section must be accompanied by—

(a) a statement that it is made under this section, and

(b) a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(8) If an accessible copy is made under this section of a work which is in copy-protected electronic form, the accessible copy must, so far as is reasonably practicable, incorporate the same or equally effective copy protection (unless the copyright owner agrees otherwise).

(9) An authorised body which has made an accessible copy of a work under this section may supply it to another authorised body which is entitled to make accessible copies of the work under this section for the purposes of enabling that other body to make accessible copies of the work.

(10) If an authorised body supplies an accessible copy it has made under this section to a person or authorised body as permitted by this section and charges the person or body for it, the sum charged must not exceed the cost of making and supplying the copy.

(11) If an accessible copy made under this section is subsequently dealt with—

(a) it is to be treated as an infringing copy for the purposes of that dealing, and

(b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

(12) In this section "dealt with" means sold or let for hire or offered or exposed for sale or hire.

31BA Making and supply of intermediate copies by authorised bodies

(1) An authorised body which is entitled to make an accessible copy of a work under section 31B may, without infringing copyright, make a copy of the work ("an intermediate copy") if this is necessary in order to make the accessible copy.

(2) An authorised body which has made an intermediate copy of a work under this section may supply it to another authorised body which is entitled to make accessible copies of the work under section 31B for the purposes of enabling that other body to make accessible copies of the work.

(3) Copyright is infringed by the transfer of an intermediate copy made under this section to a person other than another authorised body as permitted by subsection (2), except where the transfer is authorised by the copyright owner.

(4) If an authorised body supplies an intermediate copy to an authorised body under subsection (2) and charges the body for it, the sum charged must not exceed the cost of making and supplying the copy.

31BB Accessible and intermediate copies: records and notification

(1) An authorised body must keep a record of—

(a) accessible copies it makes under section 31B,

(b) intermediate copies it makes under section 31BA, and

(c) the persons to whom such copies are supplied.

(2) An authorised body must allow the copyright owner or a person acting for the copyright owner, on giving reasonable notice, to inspect at any reasonable time—

(a) records kept under subsection (1), and

(b) records of copies made under sections 31B and 31C as those sections were in force before the coming into force of these Regulations.

(3) Within a reasonable time of making an accessible copy under section 31B, an authorised body must—

(a) notify any body which—

(i) represents particular copyright owners or owners of copyright in the type of work concerned, and

(ii) has given notice to the Secretary of State of the copyright owners, or the classes of copyright owner, represented by it; or

(b) if there is no such body, notify the copyright owner (unless it is not reasonably possible to ascertain the name and address of the copyright owner).

31F Sections 31A to 31BB: interpretation and general

(1) This section supplements sections 31A to 31BB and includes definitions.

(2) "Disabled person" means a person who has a physical or mental impairment which prevents the person from enjoying a copyright work to the same degree as a person who does not have that impairment, and "disability" is to be construed accordingly.

(3) But a person is not to be regarded as disabled by reason only of an impairment of visual function which can be improved, by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light.

(4) An "accessible copy" of a copyright work means a version of the work which enables the fuller enjoyment of the work by disabled persons.

(5) An accessible copy—

(a) may include facilities for navigating around the version of the work, but

(b) must not include any changes to the work which are not necessary to overcome the problems suffered by the disabled persons for whom the accessible copy is intended.

(6) "Authorised body" means—

(a) an educational establishment, or

(b) a body that is not conducted for profit.

(7) The “supply” of a copy includes making it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will or may be returned.

(8) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of section 31A, 31B or 31BA, would not infringe copyright, that term is unenforceable.”

Education

32 Illustration for instruction

(1) Fair dealing with a work for the sole purpose of illustration for instruction does not infringe copyright in the work provided that the dealing is—

(a) for a non-commercial purpose,

(b) by a person giving or receiving instruction (or preparing for giving or receiving instruction), and

(c) accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) For the purposes of subsection (1), “giving or receiving instruction” includes setting examination questions, communicating the questions to pupils and answering the questions.

(3) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

33 Anthologies for educational use

(1) The inclusion of a short passage from a published literary or dramatic work in a collection which--

(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, and

(b) consists mainly of material in which no copyright subsists,

does not infringe the copyright in the work if the work itself is not intended for use in such establishments and the inclusion is accompanied by a sufficient acknowledgement.

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

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

(a) shall be taken to include excerpts from works by him in collaboration with another, and

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

(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.

34 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 teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment--

(a) by a teacher or pupil 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 public performance for the purposes of infringement of copyright.

(2) The playing or showing of a sound recording, film or broadcast before such an audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright.

(3) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.

35 Recording by educational establishments of broadcasts

(1) A recording of a broadcast, 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 in any work included in it, provided that—

(a) the educational purposes are non-commercial, and

(b) the recording or copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) Copyright is not infringed where a recording of a broadcast or a copy of such a recording, made under subsection (1), is communicated by or on behalf of the educational establishment to its pupils or staff for the non-commercial educational purposes of that establishment.

(3) Subsection (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.

(4) Acts which would otherwise be permitted by this section are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.

(5) If a copy made under this section is subsequently dealt with—

(a) it is to be treated as an infringing copy for the purposes of that dealing, and

(b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

(6) In this section "dealt with" means—

(a) sold or let for hire,

(b) offered or exposed for sale or hire, or

(c) communicated otherwise than as permitted by subsection (2).

36 Copying and use of extracts of works by educational establishments

(1) The copying of extracts of a relevant work by or on behalf of an educational establishment does not infringe copyright in the work , provided that—

(a) the copy is made for the purposes of instruction for a non-commercial purpose, and

(b) the copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) Copyright is not infringed where a copy of an extract made under subsection (1) is communicated by or on behalf of the educational establishment to its pupils or staff for the purposes of instruction for a non-commercial purpose.

(3) Subsection (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.

(4) In this section "relevant work" means a copyright work other than—

(a) a broadcast, or

(b) an artistic work which is not incorporated into another work.

(5) Not more than 5% of a work may be copied under this section by or on behalf of an educational establishment in any period of 12 months, and for these purposes a work which incorporates another work is to be treated as a single work.

(6) Acts which would otherwise be permitted by this section are not permitted if, or to the extent that, licences are available authorising the acts in question and the

educational establishment responsible for those acts knew or ought to have been aware of that fact.

(7) The terms of a licence granted to an educational establishment authorising acts permitted by this section are of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted by this section.

(8) If a copy made under this section is subsequently dealt with—

(a) it is to be treated as an infringing copy for the purposes of that dealing, and

(b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

(9) In this section “dealt with” means—

(a) sold or let for hire,

(b) offered or exposed for sale or hire, or

(c) communicated otherwise than as permitted by subsection (2).

36A Lending of copies by educational establishments

Copyright in a work is not infringed by the lending of copies of the work by an educational establishment.

Libraries and archives

40A Lending of copies by libraries or archives

(1) Copyright in a work of any description is not infringed by the following acts by a public library in relation to a book within the public lending right scheme--

(a) lending the book;

(b) in relation to an audio-book or e-book, copying or issuing a copy of the book as an act incidental to lending it.

(1A) In subsection (1)--

(a) "book", "audio-book" and "e-book" have the meanings given in section 5 of the Public Lending Right Act 1979,

(b) "the public lending right scheme" means the scheme in force under section 1 of that Act,

(c) a book is within the public lending right scheme if it is a book within the meaning of the provisions of the scheme relating to eligibility, whether or not it is in fact eligible, and

(d) "lending" is to be read in accordance with the definition of "lent out" in section 5 of that Act (and section 18A of this Act does not apply).

(2) Copyright in a work is not infringed by the lending of copies of the work by a library or archive (other than a public library) which is not conducted for profit.

40B Libraries and educational establishments etc: making works available through dedicated terminals

(1) Copyright in a work is not infringed by an institution specified in subsection (2) communicating the work to the public or making it available to the public by means of a dedicated terminal on its premises, if the conditions in subsection (3) are met.

(2) The institutions are—

(a) a library,

(b) an archive,

(c) a museum, and

(d) an educational establishment.

(3) The conditions are that the work or a copy of the work—

(a) has been lawfully acquired by the institution,

(b) is communicated or made available to individual members of the public for the purposes of research or private study, and

(c) is communicated or made available in compliance with any purchase or licensing terms to which the work is subject.

41 Copying by librarians: supply of single copies to other libraries

(1) A librarian may, if the conditions in subsection (2) are met, make a single copy of the whole or part of a published work and supply it to another library, without infringing copyright in the work.

(2) The conditions are—

(a) the copy is supplied in response to a request from a library which is not conducted for profit, and

(b) at the time of making the copy the librarian does not know, or could not reasonably find out, the name and address of a person entitled to authorise the making of a copy of the work.

(3) The condition in subsection (2)(b) does not apply where the request is for a copy of an article in a periodical.

(4) Where a library makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

42 Copying by librarians etc: replacement copies of works

(1) A librarian, archivist or curator of a library, archive or museum may, without infringing copyright, make a copy of an item in that institution's permanent collection—

(a) in order to preserve or replace that item in that collection, or

(b) where an item in the permanent collection of another library, archive or museum has been lost, destroyed or damaged, in order to replace the item in the collection of that other library, archive or museum,

provided that the conditions in subsections (2) and (3) are met.

(2) The first condition is that the item is—

(a) included in the part of the collection kept wholly or mainly for the purposes of reference on the institution's premises,

(b) included in a part of the collection not accessible to the public, or

(c) available on loan only to other libraries, archives or museums.

(3) The second condition is that it is not reasonably practicable to purchase a copy of the item to achieve either of the purposes mentioned in subsection (1).

(4) The reference in subsection (1)(b) to a library, archive or museum is to a library, archive or museum which is not conducted for profit.

(5) Where an institution makes a charge for supplying a copy to another library, archive or museum under subsection (1)(b), the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(6) In this section "item" means a work or a copy of a work.

(7) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

42A Copying by librarians: single copies of published works

(1) A librarian of a library which is not conducted for profit may, if the conditions in subsection (2) are met, make and supply a single copy of—

(a) one article in any one issue of a periodical, or

(b) a reasonable proportion of any other published work,

without infringing copyright in the work.

(2) The conditions are—

(a) the copy is supplied in response to a request from a person who has provided the librarian with a declaration in writing which includes the information set out in subsection (3), and

(b) the librarian is not aware that the declaration is false in a material particular.

(3) The information which must be included in the declaration is—

(a) the name of the person who requires the copy and the material which that person requires,

(b) a statement that the person has not previously been supplied with a copy of that material by any library,

(c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person, and

(d) a statement that to the best of the person's knowledge, no other person with whom the person works or studies has made, or intends to make, at or about the same time as the person's request, a request for substantially the same material for substantially the same purpose.

(4) Where a library makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) Where a person ("P") makes a declaration under this section that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by P—

(a) P is liable for infringement of copyright as if P had made the copy, and

(b) the copy supplied to P is to be treated as an infringing copy for all purposes.

(6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

43 Copying by librarians or archivists: single copies of unpublished works

(1) A librarian or archivist may make and supply a single copy of the whole or part of a work without infringing copyright in the work, provided that—

(a) the copy is supplied in response to a request from a person who has provided the librarian or archivist with a declaration in writing which includes the information set out in subsection (2), and

(b) the librarian or archivist is not aware that the declaration is false in a material particular.

(2) The information which must be included in the declaration is—

(a) the name of the person who requires the copy and the material which that person requires,

(b) a statement that the person has not previously been supplied with a copy of that material by any library or archive, and

(c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person.

(3) But copyright is infringed if—

(a) the work had been published or communicated to the public before the date it was deposited in the library or archive, or

(b) the copyright owner has prohibited the copying of the work,

and at the time of making the copy the librarian or archivist is, or ought to be, aware of that fact.

(4) Where a library or archive makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) Where a person ("P") makes a declaration under this section that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by P—

(a) P is liable for infringement of copyright as if P had made the copy, and

(b) the copy supplied to P is to be treated as an infringing copy for all purposes.

43A Sections 40A to 43: interpretation

(1) The following definitions have effect for the purposes of sections 40A to 43.

(2) "Library" means—

(a) a library which is publicly accessible, or

(b) a library of an educational establishment.

(3) "Museum" includes a gallery.

(4) “Conducted for profit”, in relation to a library, archive or museum, means a body of that kind which is established or conducted for profit or which forms part of, or is administered by, a body established or conducted for profit.

(5) References to a librarian, archivist or curator include a person acting on behalf of a librarian, archivist or curator.

44 Copy of work required to be made as condition of export

If an article of cultural or historical importance or interest cannot lawfully be exported from the United Kingdom unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of copyright to make that copy.

44A Legal deposit libraries

(1) Copyright is not infringed by the copying of a work from the internet by a deposit library or person acting on its behalf if--

(a) the work is of a description prescribed by regulations under section 10(5) of the 2003 Act,

(b) its publication on the internet, or a person publishing it there, is connected with the United Kingdom in a manner so prescribed, and

(c) the copying is done in accordance with any conditions so prescribed.

(2) Copyright is not infringed by the doing of anything in relation to relevant material permitted to be done under regulations under section 7 of the 2003 Act.

(3) The Secretary of State may by regulations make provision excluding, in relation to prescribed activities done in relation to relevant material, the application of such of the provisions of this Chapter as are prescribed.

(4) Regulations under subsection (3) may in particular make provision prescribing activities--

(a) done for a prescribed purpose,

(b) done by prescribed descriptions of reader,

(c) done in relation to prescribed descriptions of relevant material,

(d) done other than in accordance with prescribed conditions.

(5) Regulations under this section may make different provision for different purposes.

(6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section--

(a) "the 2003 Act" means the Legal Deposit Libraries Act 2003;

(b) "deposit library", "reader" and "relevant material" have the same meaning as in section 7 of the 2003 Act;

(c) "prescribed" means prescribed by regulations made by the Secretary of State.

Public administration

45 Parliamentary and judicial proceedings

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

(2) Copyright is not infringed by anything done for the purposes of reporting such proceedings; but this shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

46 Royal Commissions and statutory inquiries

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

(2) Copyright is not infringed by anything done for the purpose of reporting any such proceedings held in public; but this shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

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

(4) In this section--

"Royal Commission" includes a Commission appointed for Northern Ireland by the Secretary of State in pursuance of the prerogative powers of Her Majesty delegated to him under section 7(2) of the Northern Ireland Constitution Act 1973; and

"statutory inquiry" means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under an enactment.

47 Material open to public inspection or on official register

(1) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, any copyright in the material as a literary work is not infringed by the copying of so much of the material as contains factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve the issuing of copies to the public.

(2) Where material is open to public inspection pursuant to a statutory requirement, copyright in the material is not infringed by an act to which subsection (3A) applies provided that—

(a) the act is done by or with the authority of the appropriate person,

(b) the purpose of the act is—

(i) to enable the material to be inspected at a more convenient time or place, or

(ii) to otherwise facilitate the exercise of any right for the purpose of which the statutory requirement is imposed, and

(c) in the case of the act specified in subsection (3A)(c), the material is not commercially available to the public by or with the authority of the copyright owner.

(3) Where material which contains information about matters of general scientific, technical, commercial or economic interest is on a statutory register or is open to public inspection pursuant to a statutory requirement, copyright in the material is not infringed by an act to which subsection (3A) applies provided that—

(a) the act is done by or with the authority of the appropriate person,

(b) the purpose of the act is to disseminate that information, and

(c) in the case of the act specified in subsection (3A)(c), the material is not commercially available to the public by or with the authority of the copyright owner.

(3A) This subsection applies to any of the following acts—

(a) copying the material,

(b) issuing copies of the material to the public, and

(c) making the material (or a copy of it) available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

(4) The Secretary of State may by order provide that subsection (1), (2) or (3) 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 Secretary of State may by order provide that subsections (1) to (3) apply, to such extent and with such modifications as may be specified in the order--

(a) to material made open to public inspection by--

(i) an international organisation specified in the order, or

(ii) a person so specified who has functions in the United Kingdom under an international agreement to which the United Kingdom is party, or

(b) to a register maintained by an international organisation specified in the order,

as they apply in relation to material open to public inspection pursuant to a statutory requirement or to a statutory register.

(6) In this section--

"appropriate person" means the person required to make the material open to public inspection or, as the case may be, the person maintaining the register;

"statutory register" means a register maintained in pursuance of a statutory requirement; and

"statutory requirement" means a requirement imposed by provision made by or under an enactment.

(7) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

48 Material communicated to the Crown in the course of public business

(1) This section applies where 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 a document or other material thing recording or embodying the work is owned by or in the custody or control of the Crown.

(2) The Crown may, without infringing copyright in the work, do an act specified in subsection (3) provided that—

(a) the act is done for the purpose for which the work was communicated to the Crown, or any related purpose which could reasonably have been anticipated by the copyright owner, and

(b) the work has not been previously published otherwise than by virtue of this section.

(3) The acts referred to in subsection (2) are—

(a) copying the work,

(b) issuing copies of the work to the public, and

(c) making the work (or a copy of it) available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

(4) In subsection (1) "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.

(6) In this section "the Crown" includes a health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990, the National Health Service Commissioning Board, a clinical commissioning group established under section 14D of the National Health Service Act 2006, the Care Quality Commission and a National Health Service trust established under *section 25 of the National Health Service Act 2006,* section 18 of the National Health Service (Wales) Act 2006 or the National

Health Service (Scotland) Act 1978 and an NHS foundation trust and also includes a health and social services body, as defined in Article 7(6) of the Health and Personal Social Services (Northern Ireland) Order 1991, and a Health and Social Services trust established under that Order; and the reference in subsection (1) above to public business shall be construed accordingly.

49 Public records

Material which is comprised in public records within the meaning of the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act (Northern Ireland) 1923, or in Welsh public records (as defined in the Government of Wales Act 2006), which are open to public inspection in pursuance of that Act, may be copied, and a copy may be supplied to any person, by or with the authority of any officer appointed under that Act, without infringement of copyright.

50 Acts done under statutory authority

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

(2) Subsection (1) applies in relation to an enactment contained in Northern Ireland legislation as it applies in relation to an Act of Parliament.

(3) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.

Computer programs: lawful users

50A Back up copies

(1) It is not an infringement of copyright for a lawful user of a copy of a computer program to make any back up copy of it which it is necessary for him to have for the purposes of his lawful use.

(2) For the purposes of this section and sections 50B, 50BA and 50C a person is a lawful user of a computer program if (whether under a licence to do any acts restricted by the copyright in the program or otherwise), he has a right to use the program.

(3) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296A, void).

50B Decompilation

(1) It is not an infringement of copyright for a lawful user of a copy of a computer program expressed in a low level language--

(a) to convert it into a version expressed in a higher level language, or

(b) incidentally in the course of so converting the program, to copy it,

(that is, to "decompile" it), provided that the conditions in subsection (2) are met.

(2) The conditions are that--

(a) it is necessary to decompile the program to obtain the information necessary to create an independent program which can be operated with the program decompiled or with another program ("the permitted objective"); and

(b) the information so obtained is not used for any purpose other than the permitted objective.

(3) In particular, the conditions in subsection (2) are not met if the lawful user--

(a) has readily available to him the information necessary to achieve the permitted objective;

(b) does not confine the decompiling to such acts as are necessary to achieve the permitted objective;

(c) supplies the information obtained by the decompiling to any person to whom it is not necessary to supply it in order to achieve the permitted objective; or

(d) uses the information to create a program which is substantially similar in its expression to the program decompiled or to do any act restricted by copyright.

(4) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296A, void).

50BA Observing, studying and testing of computer programs

(1) It is not an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

(2) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296A, void).

50C Other acts permitted to lawful users

(1) It is not an infringement of copyright for a lawful user of a copy of a computer program to copy or adapt it, provided that the copying or adapting--

(a) is necessary for his lawful use; and

(b) is not prohibited under any term or condition of an agreement regulating the circumstances in which his use is lawful.

(2) It may, in particular, be necessary for the lawful use of a computer program to copy it or adapt it for the purpose of correcting errors in it.

(3) This section does not apply to any copying or adapting permitted under section 50A, 50B or 50BA.

Databases: permitted acts

50D Acts permitted in relation to databases

(1) It is not an infringement of copyright in a database for a person who has a right to use the database or any part of the database, (whether under a licence to do any of the acts restricted by the copyright in the database or otherwise) to do, in the exercise of that right, anything which is necessary for the purposes of access to and use of the contents of the database or of that part of the database.

(2) Where an act which would otherwise infringe copyright in a database is permitted under this section, it is irrelevant whether or not there exists any term or condition in any agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296B, void).

Designs

51 Design documents and models

(1) It is not an infringement of any copyright in a design document or model recording or embodying a design for anything other than an artistic work or a typeface to make an article to the design or to copy an article made to the design.

(2) Nor is it an infringement of the copyright to issue to the public, or include in a film or communicate to the public, anything the making of which was, by virtue of subsection (1), not an infringement of that copyright.

(3) In this section--

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

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

52 Effect of exploitation of design derived from artistic work

(1) This section applies where an artistic work has been exploited, by or with the licence of the copyright owner, by--

(a) making by an industrial process articles falling to be treated for the purposes of this Part as copies of the work, and

(b) marketing such articles, in the United Kingdom or elsewhere.

(2) After the end of the period of 25 years from the end of the calendar year in which such articles are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.

(3) Where only part of an artistic work is exploited as mentioned in subsection (1), subsection (2) applies only in relation to that part.

(4) The Secretary of State may by order make provision--

(a) as to the circumstances in which an article, or any description of article, is to be regarded for the purposes of this section as made by an industrial process;

(b) excluding from the operation of this section such articles of a primarily literary or artistic character as he thinks fit.

(5) An order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this section--

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

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

53 Things done in reliance on registration of design

(1) The copyright in an artistic work is not infringed by anything done--

(a) in pursuance of an assignment or licence made or granted by a person registered–

(i) under the Registered Designs Act 1949 as the proprietor of a corresponding design, or

(ii) under the Community Design Regulation as the right holder of a corresponding registered Community design, and

(b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation or invalidation of the registration or, in a case of registration under the 1949 Act, for rectifying the relevant entry in the register of designs;

and this is so notwithstanding that the person registered as the proprietor was not the proprietor of the design for the purposes of the 1949 Act or, in a case of registration under the Community Design Regulation, that the person registered as the right holder was not the right holder of the design for the purposes of the Regulation.

(2) In subsection (1) a "corresponding design", in relation to an artistic work, means a design within the meaning of the 1949 Act which if applied to an article would produce something which would be treated for the purposes of this Part as a copy of the artistic work.

(3) In subsection (1), a “corresponding registered Community design”, in relation to an artistic work, means a design within the meaning of the Community Design Regulation which if applied to an article would produce something which would be treated for the purposes of this Part as a copy of the artistic work.

(4) In this section, “the Community Design Regulation” means Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

Typefaces

54 Use of typeface in ordinary course of printing

(1) It is not an infringement of copyright in an artistic work consisting of the design of a typeface--

(a) to use the typeface in the ordinary course of typing, composing text, typesetting or printing,

(b) to possess an article for the purpose of such use, or

(c) to do anything in relation to material produced by such use;

and this is so notwithstanding that an article is used which is an infringing copy of the work.

(2) However, the following provisions of this Part apply in relation to persons making, importing or dealing with articles specifically designed or adapted for producing material in a particular typeface, or possessing such articles for the purpose of dealing with them,

as if the production of material as mentioned in subsection (1) did infringe copyright in the artistic work consisting of the design of the typeface--

section 24 (secondary infringement: making, importing, possessing or dealing with article for making infringing copy),

sections 99 and 100 (order for delivery up and right of seizure),

section 107(2) (offence of making or possessing such an article), and

section 108 (order for delivery up in criminal proceedings).

(3) The references in subsection (2) to "dealing with" an article are to selling, letting for hire, or offering or exposing for sale or hire, exhibiting in public, or distributing.

55 Articles for producing material in particular typeface

(1) This section applies to the copyright in an artistic work consisting of the design of a typeface where articles specifically designed or adapted for producing material in that typeface have been marketed by or with the licence of the copyright owner.

(2) After the period of 25 years from the end of the calendar year in which the first such articles are marketed, the work may be copied by making further such articles, or doing anything for the purpose of making such articles, and anything may be done in relation to articles so made, without infringing copyright in the work.

(3) In subsection (1) "marketed" means sold, let for hire or offered or exposed for sale or hire, in the United Kingdom or elsewhere.

Works in electronic form

56 Transfers of copies of works in electronic form

(1) This section applies where a copy of a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work, or to adapt it or make copies of an adaptation, in connection with his use of it.

(2) If there are no express terms--

(a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer, or

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

anything which the purchaser was allowed to do may also be done without infringement of copyright by a transferee; but any copy, adaptation or copy of an adaptation made by

the purchaser which is not also transferred shall be treated as an infringing copy for all purposes after the transfer.

(3) The same applies where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

(4) The above provisions also apply on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.

Miscellaneous: literary, dramatic, musical and artistic works

57 Anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author

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

(a) it is not possible by reasonable inquiry to ascertain the identity of the author, and

(b) it is reasonable to assume--

(i) that copyright has expired, or

(ii) that the author died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1)(b)(ii) does not apply in relation to--

(a) a work in which Crown copyright subsists, or

(b) a work in which copyright originally vested in an international organisation by virtue of section 168 and in respect of which an Order under that section specifies a copyright period longer than 70 years.

(3) In relation to a work of joint authorship--

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

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

58 Use of notes or recordings of spoken words in certain cases

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

(a) of reporting current events, or

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

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

(2) The conditions are that--

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

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

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

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

59 Public reading or recitation

(1) The reading or recitation in public by one person of a reasonable extract from a published literary or dramatic work does not infringe any copyright in the work if it is accompanied by a sufficient acknowledgement.

(2) Copyright in a work is not infringed by the making of a sound recording, or the communication to the public, of a reading or recitation which by virtue of subsection (1) does not infringe copyright in the work, provided that the recording or communication to the public consists mainly of material in relation to which it is not necessary to rely on that subsection.

60 Abstracts of scientific or technical articles

(1) 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 it to the public.

(2) This section does not apply if or to the extent that there is a licensing scheme certified for the purposes of this section under section 143 providing for the grant of licences.

61 Recordings of folksongs

(1) A sound recording of a performance of a song may be made for the purpose of including it in an archive maintained by a body not established or conducted for profit without infringing any copyright in the words as a literary work or in the accompanying musical work, provided the conditions in subsection (2) below are met.

(2) The conditions are that--

(a) the words are unpublished and of unknown authorship at the time the recording is made,

(b) the making of the recording does not infringe any other copyright, and

(c) its making is not prohibited by any performer.

(3) A single copy of a sound recording made in reliance on subsection (1) and included in an archive referred to in that subsection may be made and supplied by the archivist without infringing copyright in the recording or the works included in it, provided that—

(a) the copy is supplied in response to a request from a person who has provided the archivist with a declaration in writing which includes the information set out in subsection (4), and

(b) the archivist is not aware that the declaration is false in a material particular.

(4) The information which must be included in the declaration is—

(a) the name of the person who requires the copy and the sound recording which is the subject of the request,

(b) a statement that the person has not previously been supplied with a copy of that sound recording by any archivist, and

(c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person.

(5) Where an archive makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(6) Where a person (“P”) makes a declaration under this section that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by P—

(a) P is liable for infringement of copyright as if P had made the copy, and

(b) the copy supplied to P is to be treated as an infringing copy for all purposes.

(7) In this section references to an archivist include a person acting on behalf of an archivist.

62 Representation of certain artistic works on public display

(1) This section applies to--

(a) buildings, and

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

(2) The copyright in such a work is not infringed by--

(a) making a graphic work representing it,

(b) making a photograph or film of it, or

(c) making a broadcast of a visual image of it.

(3) Nor is the copyright infringed by the issue to the public of copies, or the communication to the public, of anything whose making was, by virtue of this section, not an infringement of the copyright.

63 Advertisement of sale of artistic work

(1) It is not an infringement of copyright in an artistic work to copy it, or to issue copies to the public, for the purpose of advertising the sale of the work.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with for any other purpose, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose "dealt with" means sold or let for hire, offered or exposed for sale or hire, exhibited in public, distributed or communicated to the public.

64 Making of subsequent works by same artist

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

65 Reconstruction of buildings

Anything done for the purposes of reconstructing a building does not infringe any 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.

Miscellaneous: lending of works and playing of sound recordings

66 Lending to public of copies of certain works

(1) The Secretary of State may by order provide that in such cases as may be specified in the order the lending to the public of copies of literary, dramatic, musical or

artistic works, sound recordings or films shall be treated as licensed by the copyright owner subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) No such order shall apply if, or to the extent that, there is a licensing scheme certified for the purposes of this section under section 143 providing for the grant of licences.

(3) An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies lent, the lender or the circumstances of the lending.

(4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(5) Nothing in this section affects any liability under section 23 (secondary infringement: possessing or dealing with infringing copy) in respect of the lending of infringing copies.

Miscellaneous: films and sound recordings

66A Films: acts permitted on assumptions as to expiry of copyright, &c

(1) Copyright in a film is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when--

(a) it is not possible by reasonable inquiry to ascertain the identity of any of the persons referred to in section 13B(2)(a) to (d) (persons by reference to whose life the copyright period is ascertained), and

(b) it is reasonable to assume--

(i) that copyright has expired, or

(ii) that the last to die of those persons died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1)(b)(ii) does not apply in relation to--

(a) a film in which Crown copyright subsists, or

(b) a film in which copyright originally vested in an international organisation by virtue of section 168 and in respect of which an Order under that section specifies a copyright period longer than 70 years.

Miscellaneous: broadcasts

68 Incidental recording for purposes of broadcast

(1) This section applies where by virtue of a licence or assignment of copyright a person is authorised to broadcast--

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

(b) an artistic work, or

(c) a sound recording or film.

(2) He shall by virtue of this section be treated as licensed by the owner of the copyright in the work to do or authorise any of the following for the purposes of the broadcast--

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

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

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

(3) That licence is subject to the condition that the recording, film, photograph or copy in question--

(a) shall not be used for any other purpose, and

(b) shall be destroyed within 28 days of being first used for broadcasting the work.

(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 mentioned in subsection (3)(a), and

(b) for all purposes after that condition or the condition mentioned in subsection (3)(b) is broken.

69 Recording for purposes of supervision and control of broadcasts and other services

(1) Copyright is not infringed by the making or use by the British Broadcasting Corporation, for the purpose of maintaining supervision and control over programmes broadcast by them or included in any on-demand programme service provided by them, of recordings of those programmes.

(2) Copyright is not infringed by anything done in pursuance of--

(a) section 167(1) of the Broadcasting Act 1990, section 115(4) or (6) or 117 of the Broadcasting Act 1996 or paragraph 20 of Schedule 12 to the Communications Act 2003;

(b) a condition which, by virtue of section 334(1) of the Communications Act 2003, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996;

(c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of OFCOM to require production of recordings etc);

(d) section 334(3), 368O(1) or (3) of the Communications Act 2003.

(3) Copyright is not infringed by the use by OFCOM in connection with the performance of any of their functions under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003 of--

(a) any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or

(b) any existing material which is transferred to them by a scheme made under section 30 of the Communications Act 2003.

(4) In subsection (3), "existing material" means--

(a) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996; and

(b) any recording or transcript which was provided to the Broadcasting Standards Commission under section 115(4) or (6) or 116(5) of the Broadcasting Act 1996.

(5) Copyright is not infringed by the use by an appropriate regulatory authority designated under section 368B of the Communications Act 2003, in connection with the performance of any of their functions under that Act, of any recording, script or transcript which is provided to them under or by virtue of any provision of that Act.

(6) In this section "on-demand programme service" has the same meaning as in the Communications Act 2003 (see section 368A of that Act).

70 Recording for purposes of time-shifting

(1) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or in any work included in it.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with--

(a) it shall be treated as an infringing copy for the purposes of that dealing; and

(b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.

(3) In subsection (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

71 Photographs of broadcasts

(1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any copyright in the broadcast or in any film included in it.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with--

(a) it shall be treated as an infringing copy for the purposes of that dealing; and

(b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.

(3) In subsection (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

72 Free public showing or playing of broadcast

(1) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any copyright in--

(a) the broadcast;

(b) any sound recording (except so far as it is an excepted sound recording) included in it; or

(c) any film included in it.

(1A) For the purposes of this Part an "excepted sound recording" is a sound recording--

(a) whose author is not the author of the broadcast in which it is included; and

(b) which is a recording of music with or without words spoken or sung.

(1B) Where by virtue of subsection (1) the copyright in a broadcast shown or played in public is not infringed, copyright in any excepted sound recording included in it is not infringed if the playing or showing of that broadcast in public--

[(a)]

(b) is necessary for the purposes of--

(i) repairing equipment for the reception of broadcasts;

(ii) demonstrating that a repair to such equipment has been carried out; or

(iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.

(2) 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 it forms part)--

(i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast, or

(ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.

(3) The following shall not be regarded as having paid for admission to a place--

(a) persons admitted as residents or inmates of the place;

(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 seeing or hearing broadcasts is only incidental to the main purposes of the club or society.

(4) Where the making of the broadcast was an infringement of the copyright in a sound recording or film, the fact that it was heard or seen in public by the reception of the broadcast shall be taken into account in assessing the damages for that infringement.

73 Reception and re-transmission of wireless broadcast by cable

(1) This section applies where a wireless broadcast made from a place in the United Kingdom is received and immediately re-transmitted by cable.

(2) The copyright in the broadcast is not infringed--

(a) if the re-transmission by cable is in pursuance of a relevant requirement, or

(b) if and to the extent that the broadcast is made for reception in the area in which it is re-transmitted by cable and forms part of a qualifying service.

(3) The 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 it is re-transmitted by cable; but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted by cable shall be taken into account in assessing the damages for that infringement.

(4) Where--

(a) the re-transmission by cable is in pursuance of a relevant requirement, but

(b) to any extent, the area in which the re-transmission by cable takes place ("the cable area") falls outside the area for reception in which the broadcast is made ("the broadcast area"),

the re-transmission by cable (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any work included in the broadcast shall, subject to subsection (5), be treated as licensed by the owner of the copyright in the work, subject only to the payment to him by the person making the broadcast of such

reasonable royalty or other payment in respect of the re-transmission by cable of the broadcast as may be agreed or determined in default of agreement by the Copyright Tribunal.

(5) Subsection (4) does not apply if, or to the extent that, the re-transmission of the work by cable is (apart from that subsection) licensed by the owner of the copyright in the work.

(6) In this section "qualifying service" means, subject to subsection (8), any of the following services--

(a) a regional or national Channel 3 service,

(b) Channel 4, Channel 5 and S4C,

(c) the public teletext service,

(d) S4C Digital, and

(e) the television broadcasting services and teletext service of the British Broadcasting Corporation;

and expressions used in this subsection have the same meanings as in Part 3 of the Communications Act 2003.

(7) In this section "relevant requirement" means a requirement imposed by a general condition (within the meaning of Chapter 1 of Part 2 of the Communications Act 2003) the setting of which is authorised under section 64 of that Act (must-carry obligations).

(8) The Secretary of State may by order amend subsection (6) so as to add any service to, or remove any service from, the definition of "qualifying service".

(9) The Secretary of State may also by order--

(a) provide that in specified cases subsection (3) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that subsection, or

(b) exclude the application of that subsection in relation to broadcasts of a specified description made as mentioned in that subsection.

(10) Where the Secretary of State exercises the power conferred by subsection (9)(b) in relation to broadcasts of any description, the order may also provide for subsection (4) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.

(11) An order under this section may contain such transitional provision as appears to the Secretary of State to be appropriate.

(12) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(13) In this section references to re-transmission by cable include the transmission of microwave energy between terrestrial fixed points.

73A Royalty or other sum payable in pursuance of section 73(4)

(1) An application to settle the royalty or other sum payable in pursuance of subsection (4) of section 73 (reception and re-transmission of wireless broadcast by cable) may be made to the Copyright Tribunal by the copyright owner or the person making the broadcast.

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

(3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under subsection (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.

(5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

75 Recording of broadcast for archival purposes

(1) A recording of a broadcast or a copy of such a recording may be made for the purpose of being placed in an archive maintained by a body which is not established or conducted for profit without infringing any copyright in the broadcast or in any work included in it.

(2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

Adaptations

76 Adaptations

An act which by virtue of this Chapter 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.

Chapter IV

Moral Rights

Right to be identified as author or director

77 Right to be identified as author or director

(1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right to be identified as the author or director of the work in the circumstances mentioned in this section; but the right is not infringed unless it has been asserted in accordance with section 78.

(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 whenever--

(a) the work is published commercially, performed in public or communicated to the public; or

(b) copies of a film or sound recording including the work are issued to the public;

and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.

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

(a) the work is published commercially;

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

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

and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.

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

(a) the work is published commercially or exhibited in public, or a visual image of it is communicated to the public;

(b) a film including a visual image of the work is shown in public or copies of such a film are issued to the public; or

(c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it, or of a photograph of it, are issued to the public.

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

(6) The director of a film has the right to be identified whenever the film is shown in public or communicated to the public or copies of the film are issued to the public.

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

(a) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy,

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

(c) in any other case, to be identified in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, exhibition, showing or communication to the public in question;

and the identification must in each case be clear and reasonably prominent.

(8) If the author or director in asserting his right to be identified specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.

(9) This section has effect subject to section 79 (exceptions to right).

78 Requirement that right be asserted

(1) A person does not infringe the right conferred by section 77 (right to be identified as author or director) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.

(2) The right may be asserted generally, or in relation to any specified act or description of acts--

(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 right to be identified, or

(b) by instrument in writing signed by the author or director.

(3) The right may also be asserted in relation to the public exhibition of an artistic work--

(a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached, or

(b) by including in a 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 person granting the licence that the author asserts his right to be identified 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 (3) are--

(a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through him, whether or not he has notice of the assertion;

(b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought;

(c) in the case of an assertion under subsection (3)(a), anyone into whose hands that original or copy comes, whether or not the identification is still present or visible;

(d) in the case of an assertion under subsection (3)(b), the licensee and anyone into whose hands a copy made in pursuance of the licence comes, whether or not he 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.

79 Exceptions to right

(1) The right conferred by section 77 (right to be identified as author or director) is subject to the following exceptions.

(2) The right does not apply in relation to the following descriptions of work--

(a) a computer program;

(b) the design of a typeface;

(c) any computer-generated work.

(3) The right does not apply to anything done by or with the authority of the copyright owner where copyright in the work originally vested in the author's or director's employer by virtue of section 11(2) (works produced in the course of employment).

(4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work--

(a) section 30 (fair dealing for certain purposes), so far as it relates to the reporting of current events by means of a sound recording, film or broadcast;

(b) section 31 (incidental inclusion of work in an artistic work, sound recording, film or broadcast);

(d) section 45 (parliamentary and judicial proceedings);

(e) section 46(1) or (2) (Royal Commissions and statutory inquiries);

(f) section 51 (use of design documents and models);

(g) *section 52 (effect of exploitation of design derived from artistic work);*

(h) section 57 or 66A (acts permitted on assumptions as to expiry of copyright, &c).

(4A) The right is also not infringed by any act done for the purposes of an examination which by virtue of any provision of Chapter 3 of Part 1 would not infringe copyright.

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

(6) The right does not apply in relation to the publication in--

(a) a newspaper, magazine or similar periodical, or

(b) an encyclopaedia, dictionary, yearbook 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.

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

(a) a work in which Crown copyright or Parliamentary copyright subsists, or

(b) a work in which copyright originally vested in an international organisation by virtue of section 168,

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

Right to object to derogatory treatment of work

80 Right to object to derogatory treatment of work

(1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right in the circumstances mentioned in this section not to have his work subjected to derogatory treatment.

(2) For the purposes of this section--

(a) "treatment" of a work means any addition to, deletion from or 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 it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director;

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

(3) In the case of a literary, dramatic or musical work the right is infringed by a person who--

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

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

(4) In the case of an artistic work the right is infringed by a person who--

(a) publishes commercially or exhibits in public a derogatory treatment of the work, or communicates to the public a visual image of a derogatory treatment of the work,

(b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of such a film, or

(c) in the case of--

(i) a work of architecture in the form of a model for a building,

(ii) a sculpture, 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.

(5) Subsection (4) 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 he has the right to require the identification to be removed.

(6) In the case of a film, the right is infringed by a person who--

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

(b) issues to the public copies of a derogatory treatment of the film,

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

(8) This section has effect subject to sections 81 and 82 (exceptions to and qualifications of right).

81 Exceptions to right

(1) The right conferred by section 80 (right to object to derogatory treatment of work) is subject to the following exceptions.

(2) The right does not apply to a computer program or to any computer-generated work.

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

(4) The right does not apply in relation to the publication in--

(a) a newspaper, magazine or similar periodical, or

(b) an encyclopaedia, dictionary, yearbook 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.

Nor does the right apply in relation to any subsequent exploitation elsewhere of such a work without any modification of the published version.

(5) The right is not infringed by an act which by virtue of section 57 or 66A (acts permitted on assumptions as to expiry of copyright, &c) would not infringe copyright.

(6) The right is not infringed by anything done for the purpose of--

(a) avoiding the commission of an offence,

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

(c) in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste or decency or which is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling,

provided, where the author or director is identified at the time of the relevant act or has previously been identified in or on published copies of the work, that there is a sufficient disclaimer.

82 Qualification of right in certain cases

(1) This section applies to--

(a) works in which copyright originally vested in the author's or director's employer by virtue of section 11(2) (works produced in course of employment),

(b) works in which Crown copyright or Parliamentary copyright subsists, and

(c) works in which copyright originally vested in an international organisation by virtue of section 168.

(2) The right conferred by section 80 (right to object to derogatory treatment of work) does not apply to anything done in relation to such a work by or with the authority of the copyright owner unless the author or director--

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

(b) has previously been identified in or on published copies of the work;

and where in such a case the right does apply, it is not infringed if there is a sufficient disclaimer.

83 Infringement of right by possessing or dealing with infringing article

(1) The right conferred by section 80 (right to object to derogatory treatment of work) is also infringed by a person who--

(a) possesses in the course of a business, or

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

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

(d) distributes otherwise than in the course of a business so as to affect prejudicially the honour or reputation of the author or director,

an article which is, and which he knows or has reason to believe is, an infringing article.

(2) An "infringing article" means a work or a copy of a work which--

(a) has been subjected to derogatory treatment within the meaning of section 80, and

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

False attribution of work

84 False attribution of work

(1) A person has the right in the circumstances mentioned in this section--

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

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

and in this section an "attribution", in relation to such a work, means a statement (express or implied) as to who is the author or director.

(2) The right is infringed by a person who--

(a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution, or

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

(3) The right is also infringed by a person who--

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

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

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

(4) The right is also infringed by the issue to the public or public display of material containing a false attribution in connection with any of the acts mentioned in subsection (2) or (3).

(5) The right is also infringed by a person who in the course of a business--

(a) possesses or deals with a copy of a work of any of the descriptions mentioned in subsection (1) in or on which there is a false attribution, or

(b) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it,

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

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

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

(b) deals with a copy of such a work as being a copy of the unaltered work of the author,

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

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

(8) This section applies where, contrary to the fact--

(a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person, or

(b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,

as it applies where the work is falsely attributed to a person as author.

Right to privacy of certain photographs and films

85 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 subsists in the resulting work, the right not to have--

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

(b) the work exhibited or shown in public, or

(c) the work communicated to the public;

and, except as mentioned in subsection (2), a person who does or authorises the doing of any of those acts infringes that right.

(2) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work--

(a) section 31 (incidental inclusion of work in an artistic work, film or broadcast);

(b) section 45 (parliamentary and judicial proceedings);

(c) section 46 (Royal Commissions and statutory inquiries);

(d) section 50 (acts done under statutory authority);

(e) section 57 or 66A (acts permitted on assumptions as to expiry of copyright, &c).

Supplementary

86 Duration of rights

(1) The rights conferred by section 77 (right to be identified as author or director), section 80 (right to object to derogatory treatment of work) and section 85 (right to privacy of certain photographs and films) continue to subsist so long as copyright subsists in the work.

(2) The right conferred by section 84 (false attribution) continues to subsist until 20 years after a person's death.

87 Consent and waiver of rights

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

(2) Any of those rights may be waived by instrument in writing signed by the person giving up the right.

(3) A waiver--

(a) may relate to a specific work, to works of a specified description or to works generally, and may relate to existing or future works, and

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

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

(4) Nothing in this Chapter shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to any of the rights mentioned in subsection (1).

88 Application of provisions to joint works

(1) The right conferred by section 77 (right to be identified as author or director) 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 78 by each joint author in relation to himself.

(2) The right conferred by section 80 (right to object to derogatory treatment of work) is, in the case of a work of joint authorship, a right of each joint author and his right is satisfied if he consents to the treatment in question.

(3) A waiver under section 87 of those rights by one joint author does not affect the rights of the other joint authors.

(4) The right conferred by section 84 (false attribution) is infringed, in the circumstances mentioned 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.

(5) The above provisions also apply (with any necessary adaptations) in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship.

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

(6) The right conferred by section 85 (right to privacy of certain photographs and films) is, in the case of a work made in pursuance of a joint commission, a right of each person who commissioned the making of the work, so that--

(a) the right of each is satisfied if he consents to the act in question, and

(b) a waiver under section 87 by one of them does not affect the rights of the others.

89 Application of provisions to parts of works

(1) The rights conferred by section 77 (right to be identified as author or director) and section 85 (right to privacy of certain photographs and films) apply in relation to the whole or any substantial part of a work.

(2) The rights conferred by section 80 (right to object to derogatory treatment of work) and section 84 (false attribution) apply in relation to the whole or any part of a work.

Chapter V

Dealings with Rights in Copyright Works

Copyright

90 Assignment and licences

(1) Copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) An assignment or other 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 subsist.

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

(4) A licence granted by a copyright owner is binding on every successor in title to his 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 Part to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

91 Prospective ownership of copyright

(1) Where by an agreement made in relation to future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person, then if, on the copyright coming into existence, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this subsection.

(2) In this Part--

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

"prospective owner" shall be construed accordingly, and includes a person who is prospectively entitled to copyright by virtue of such an agreement as is mentioned in subsection (1).

(3) A licence granted by a prospective owner of copyright is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the

licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

92 Exclusive licences

(1) In this Part an "exclusive licence" means a licence in writing signed by or on behalf of the copyright owner authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the copyright owner.

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

93 Copyright to pass under will with unpublished work

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 which was not published before the death of the testator, or

(b) an original material thing containing a sound recording or film which 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 it, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

93A Presumption of transfer of rental right in case of film production agreement

(1) Where an agreement concerning film production is concluded between an author and a film producer, the author shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a copy of the author's work in the film.

(2) In this section "author" means an author, or prospective author, of a literary, dramatic, musical or artistic work.

(3) Subsection (1) does not apply to any rental right in relation to the film arising by virtue of the inclusion in the film of the screenplay, the dialogue or music specifically created for and used in the film.

(4) Where this section applies, the absence of signature by or on behalf of the author does not exclude the operation of section 91(1) (effect of purported assignment of future copyright).

(5) The reference in subsection (1) to an agreement concluded between an author and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.

(6) Section 93B (right to equitable remuneration on transfer of rental right) applies where there is a presumed transfer by virtue of this section as in the case of an actual transfer.

Right to equitable remuneration where rental right transferred

93B Right to equitable remuneration where rental right transferred

(1) Where an author to whom this section applies has transferred his rental right concerning a sound recording or a film to the producer of the sound recording or film, he retains the right to equitable remuneration for the rental.

The authors to whom this section applies are--

(a) the author of a literary, dramatic, musical or artistic work, and

(b) the principal director of a film.

(2) The right to equitable remuneration under this section may not be assigned by the author except to a collecting society for the purpose of enabling it to enforce the right on his behalf.

The right is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes.

(3) Equitable remuneration under this section is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his.

(4) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to section 93C (reference of amount to Copyright Tribunal).

(5) An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this section.

(6) References in this section to the transfer of rental right by one person to another include any arrangement having that effect, whether made by them directly or through intermediaries.

(7) In this section a "collecting society" means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration under this section on behalf of more than one author.

93C Equitable remuneration: reference of amount to Copyright Tribunal

(1) In default of agreement as to the amount payable by way of equitable remuneration under section 93B, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

(2) A person to or by whom equitable remuneration is payable under that section may also apply to the Copyright Tribunal--

(a) to vary any agreement as to the amount payable, or

(b) to vary any previous determination of the Tribunal as to that matter;

but except with the special leave of the Tribunal no such application may be made within twelve months from the date of a previous determination.

An order made on an application under this subsection has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(3) On an application under this section the Tribunal shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the author to the film or sound recording.

(4) Remuneration shall not be considered inequitable merely because it was paid by way of a single payment or at the time of the transfer of the rental right.

(5) An agreement is of no effect in so far as it purports to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Copyright Tribunal under this section.

Moral rights

94 Moral rights not assignable

The rights conferred by Chapter IV (moral rights) are not assignable.

95 Transmission of moral rights on death

(1) On the death of a person entitled to the right conferred by section 77 (right to identification of author or director), section 80 (right to object to derogatory treatment of work) or section 85 (right to privacy of certain photographs and films)--

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

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

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

(2) Where copyright forming part of a person's estate passes in part to one person and in part to another, as for example where a bequest 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 or authorise, or

(b) to part, but not the whole, of the period for which the copyright is to subsist,

any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.

(3) Where by virtue of subsection (1)(a) or (b) a right becomes exercisable by more than one person--

(a) it may, in the case of the right conferred by section 77 (right to identification of author or director), be asserted by any of them;

(b) it is, in the case of the right conferred by section 80 (right to object to derogatory treatment of work) or section 85 (right to privacy of certain photographs and films), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and

(c) any waiver of the right in accordance with section 87 by one of them 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 by virtue of subsection (1).

(5) Any infringement after a person's death of the right conferred by section 84 (false attribution) is actionable by his personal representatives.

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

Chapter VI

Remedies for Infringement

Rights and remedies of copyright owner

96 Infringement actionable by copyright owner

(1) An infringement of copyright is actionable by the copyright owner.

(2) In an action for infringement of copyright all such relief by 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 Chapter.

97 Provisions as to damages in infringement action

(1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

(2) The court may in an action for infringement of copyright 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.

97A Injunctions against service providers

(1) The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe copyright.

(2) In determining whether a service provider has actual knowledge for the purpose of this section, a court shall take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, shall have regard to--

(a) whether a service provider has received a notice through a means of contact made available in accordance with regulation 6(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013); and

(b) the extent to which any notice includes--

(i) the full name and address of the sender of the notice;

(ii) details of the infringement in question.

(3) In this section "service provider" has the meaning given to it by regulation 2 of the Electronic Commerce (EC Directive) Regulations 2002.

98 Undertaking to take licence of right in infringement proceedings

(1) If in proceedings for infringement of copyright in respect of which a licence is available as of right under section 144 (powers exercisable in consequence of report of Competition Commission) the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Copyright Tribunal under that section--

(a) no injunction shall be granted against him,

(b) no order for delivery up shall be made under section 99, and

(c) the amount recoverable against him by way of damages or on an account of profits shall not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement.

(2) An undertaking may be given at any time before final order in the proceedings, without any admission of liability.

(3) Nothing in this section affects the remedies available in respect of an infringement committed before licences of right were available.

99 Order for delivery up

(1) Where a person--

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

(b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it 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 article be delivered up to him or to such other person as the court may direct.

(2) An application shall not be made after the end of the period specified in section 113 (period after which remedy of delivery up not available); and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 114 (order as to disposal of infringing copy or other article).

(3) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall, if an order under section 114 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

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

100 Right to seize infringing copies and other articles

(1) An infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under section 99, may be seized and detained by him or a person authorised by him.

The right to seize and detain is exercisable subject to the following conditions and is subject to any decision of the court under section 114.

(2) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.

(3) A person may for the purpose of exercising the right conferred by this section enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his, and may not use any force.

(4) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

(5) In this section--

"premises" includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft; and

"prescribed" means prescribed by order of the Secretary of State.

(6) An order of the Secretary of State under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Rights and remedies of exclusive licensee

101 Rights and remedies of exclusive licensee

(1) An exclusive licensee has, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) His rights and remedies are concurrent with those of the copyright owner; and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.

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

101A Certain infringements actionable by a non-exclusive licensee

(1) A non-exclusive licensee may bring an action for infringement of copyright if--

(a) the infringing act was directly connected to a prior licensed act of the licensee; and

(b) the licence--

(i) is in writing and is signed by or on behalf of the copyright owner; and

(ii) expressly grants the non-exclusive licensee a right of action under this section.

(2) In an action brought under this section, the non-exclusive licensee shall have the same rights and remedies available to him as the copyright owner would have had if he had brought the action.

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

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

(5) Subsections (1) to (4) of section 102 shall apply to a non-exclusive licensee who has a right of action by virtue of this section as it applies to an exclusive licensee.

(6) In this section a "non-exclusive licensee" means the holder of a licence authorising the licensee to exercise a right which remains exercisable by the copyright owner.

102 Exercise of concurrent rights

(1) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they 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 with the action unless the other is either joined as a plaintiff or added as a defendant.

(2) A copyright owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(3) The above provisions do not affect the granting of interlocutory relief on an application by a copyright owner or exclusive licensee alone.

(4) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action--

(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 of them in respect of the infringement;

(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 the other of them in respect of the infringement; and

(c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them;

and these provisions apply whether or not the copyright owner and the exclusive licensee are both parties to the action.

(5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 99 (order for delivery up) or exercising the right conferred by section 100 (right of seizure); and the court may on the application of the licensee make such order under section 99 or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right conferred by section 100, as it thinks fit having regard to the terms of the licence.

Remedies for infringement of moral rights

103 Remedies for infringement of moral rights

(1) An infringement of a right conferred by Chapter IV (moral rights) is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) In proceedings for infringement of the right conferred by section 80 (right to object to derogatory treatment of work) 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.

Presumptions

104 Presumptions relevant to literary, dramatic, musical and artistic works

(1) The following presumptions apply in proceedings brought by virtue of this Chapter 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 the work as published or on the 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;

(b) to have made it in circumstances not falling within section 11(2), 163, 165 or 168 (works produced in course of employment, Crown copyright, Parliamentary copyright or copyright of certain international organisations).

(3) In the case of a work alleged to be a work of joint authorship, subsection (2) 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 as mentioned in subsection (2) but--

(a) the work qualifies for copyright protection by virtue of section 155 (qualification by reference to country of first publication), 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 have been the owner of the copyright at the time of publication.

(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, in the absence of evidence to the contrary--

(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.

105 Presumptions relevant to sound recordings and films

(1) In proceedings brought by virtue of this Chapter 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 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.

(2) In proceedings brought by virtue of this Chapter 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 director or producer of the film,

(aa) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film,

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

(c) that the film was first published in a specified year or in a 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.

(3) In proceedings brought by virtue of this Chapter 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 issue of the copies, or

(b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form in a specified year,

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 above presumptions apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.

(5) In proceedings brought by virtue of this Chapter with respect to a film, where the film as shown in public or communicated to the public bears a statement--

(a) that a named person was the director or producer of the film, or

(aa) that a named person was the principal director of the film, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in 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.

This presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public or communicated to the public.

(6) For the purposes of this section, a statement that a person was the director of a film shall be taken, unless a contrary indication appears, as meaning that he was the principal director of the film.

106 Presumptions relevant to works subject to Crown copyright

In proceedings brought by virtue of this Chapter with respect to a literary, dramatic or musical work in which Crown copyright subsists, 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 in the absence of evidence to the contrary.

Offences

107 Criminal liability for making or dealing with infringing articles, &c

(1) A person commits an offence who, without the licence of the copyright owner--

(a) makes for sale or hire, or

(b) imports into the United Kingdom otherwise than for his 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) sells or lets for hire, or

(ii) offers or exposes for sale or hire, or

(iii) exhibits in public, or

(iv) distributes, or

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

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

(2) A person commits an offence who--

(a) makes an article specifically designed or adapted for making copies of a particular copyright work, or

(b) has such an article in his possession,

knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.

(2A) A person who infringes copyright in a work by communicating the work to the public--

(a) in the course of a business, or

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

commits an offence if he knows or has reason to believe that, by doing so, he is infringing copyright in that work.

(3) Where copyright is infringed (otherwise than by reception of a communication to the public)--

(a) by the public performance of a literary, dramatic or musical work, or

(b) by the playing or showing in public of a sound recording or film,

any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.

(4) A person guilty of an offence under subsection (1)(a), (b), (d)(iv) or (e) is liable--

(a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding £50,000, or both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding ten years, or both.

(4A) A person guilty of an offence under subsection (2A) is liable--

(a) on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £50,000, or both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.

(5) A person guilty of any other offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.

(6) Sections 104 to 106 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section; but without prejudice to their application in proceedings for an order under section 108 below.

107A Enforcement by local weights and measures authority

(1) It is the duty of every local weights and measures authority to enforce within their area the provisions of section 107.

(2) The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of that section by such an authority as in relation to the enforcement of that Act--

section 27 (power to make test purchases),

section 28 (power to enter premises and inspect and seize goods and documents),

section 29 (obstruction of authorised officers), and

section 33 (compensation for loss, &c of goods seized).

(3) Subsection (1) above does not apply in relation to the enforcement of section 107 in Northern Ireland, but it is the duty of the Department of Economic Development to enforce that section in Northern Ireland.

For that purpose the provisions of the Trade Descriptions Act 1968 specified in subsection (2) apply as if for the references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.

(4) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if section 107 were contained in that Act and as if the functions of any person in relation to the enforcement of that section were functions under that Act.

(5) Nothing in this section shall be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence.

108 Order for delivery up in criminal proceedings

(1) The court before which proceedings are brought against a person for an offence under section 107 may, if satisfied that at the time of his arrest or charge--

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

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

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

(2) For this purpose a person shall be treated as charged with an offence--

(a) in England, Wales and Northern Ireland, when he is orally charged or is served with a summons or indictment;

(b) in Scotland, when he is cautioned, charged or served with a complaint or indictment.

(3) An order may be made by the court of its own motion or on the application of the prosecutor (or, in Scotland, the Lord Advocate or procurator-fiscal), 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 specified in section 113 (period after which remedy of delivery up not available), or

(b) if it appears to the court unlikely that any order will be made under section 114 (order as to disposal of infringing copy or other article).

(4) An appeal lies from an order made under this section by a magistrates' court--

(a) in England and Wales, to the Crown Court, and

(b) in Northern Ireland, to the county court;

and in Scotland, where an order has been made under this section, the person from whose possession, custody or control the infringing copy or article has been removed may, without prejudice to any other form of appeal under any rule of law, appeal against that order in the same manner as against sentence.

(5) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 114.

(6) Nothing in this section affects the powers of the court under section 143 of the Powers of Criminal Courts (Sentencing) Act 2000, Part II of the Proceeds of Crime (Scotland) Act 1995 or Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (general provisions as to forfeiture in criminal proceedings).

109 Search warrants

(1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing--

(a) that an offence under section 107(1), (2) or (2A) has been or is about to be committed in any premises, and

(b) that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

(2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in section 9(2) of the Police and Criminal Evidence Act 1984 (certain classes of personal or confidential material).

(3) A warrant under this section--

(a) may authorise persons to accompany any constable executing the warrant, and

(b) remains in force for *28 days* three months from the date of its issue.

(4) In executing a warrant issued under this section a constable may seize an article if he reasonably believes that it is evidence that any offence under section 107(1), (2) or (2A) has been or is about to be committed.

(5) In this section "premises" includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

110 Offence by body corporate: liability of officers

(1) Where an offence under section 107 committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members "director" means a member of the body corporate.

Provision for preventing importation of infringing copies

111 Infringing copies may be treated as prohibited goods

(1) The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to the Commissioners of Customs and Excise--

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

(b) that he requests the Commissioners, for a period specified in the notice, to treat as prohibited goods printed copies of the work which are infringing copies.

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

(3) The owner of the copyright in a sound recording or film may give notice in writing to the Commissioners of Customs and Excise--

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

(b) that infringing copies of the work are expected to arrive in the United Kingdom at a time and a place specified in the notice, and

(c) that he requests the Commissioners to treat the copies as prohibited goods.

(3A) The Commissioners may treat as prohibited goods only infringing copies of works which arrive in the United Kingdom--

(a) from outside the European Economic Area, or

(b) from within that Area but not having been entered for free circulation.

(3B) This section does not apply to goods placed in, or expected to be placed in, one of the situations referred to in Article 1(1), in respect of which an application may be made under Article 5(1), of Council Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

(4) When a notice is in force under this section the importation of goods to which the notice relates, otherwise than by a person for his private and domestic use, subject to subsections (3A) and (3B), is prohibited; but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.

112 Power of Commissioners of Customs and Excise to make regulations

(1) The Commissioners of Customs and Excise may make regulations prescribing the form in which notice is to be given under section 111 and requiring a person giving notice--

(a) to furnish the Commissioners with such evidence as may be specified in the regulations, either on giving notice or when the goods are imported, or at both those times, and

(b) to comply with such other conditions as may be specified in the regulations.

(2) The regulations may, in particular, require a person giving such a notice--

(a) to pay such fees in respect of the notice as may be specified by the regulations;

(b) to give such security as may be so specified in respect of any liability or expense which the Commissioners may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained;

(c) to indemnify the Commissioners against any such liability or expense, whether security has been given or not.

(3) The regulations may make different provision as respects different classes of case to which they apply and may include such incidental and supplementary provisions as the Commissioners consider expedient.

(4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Supplementary

113 Period after which remedy of delivery up not available

(1) An application for an order under section 99 (order for delivery up in civil proceedings) may not be made after the end of the period of six years from the date on which the infringing copy or article in question was made, subject to the following provisions.

(2) If during the whole or any part of that period the copyright owner--

(a) is under a disability, or

(b) is prevented by fraud or concealment from discovering the facts entitling him to apply for an order,

an application may be made at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

(3) In subsection (2) "disability"--

(a) in England and Wales, has the same meaning as in the Limitation Act 1980;

(b) in Scotland, means legal disability within the meaning of the Prescription and Limitation (Scotland) Act 1973;

(c) in Northern Ireland, has the same meaning as in the Statute of Limitations (Northern Ireland) 1958.

(4) An order under section 108 (order for delivery up in criminal proceedings) shall not, in any case, be made after the end of the period of six years from the date on which the infringing copy or article in question was made.

114 Order as to disposal of infringing copy or other article

(1) An application may be made to the court for an order that an infringing copy or other article delivered up in pursuance of an order under section 99 or 108, or seized and detained in pursuance of the right conferred by section 100, shall be--

(a) forfeited to the copyright owner, or

(b) destroyed or otherwise dealt with as the court may think fit,

or for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interests.

(3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the copy or other articles, and any such person is entitled--

(a) to appear in proceedings for an order under this section, whether or not he was served with notice, and

(b) to appeal against any order made, whether or not he appeared;

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

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

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

(6) References in this section to a person having an interest in a copy or other article include any person in whose favour an order could be made in respect of it--

(a) under this section or under section 204 or 231 of this Act;

(b) under section 24D of the Registered Designs Act 1949;

(c) under section 19 of Trade Marks Act 1994 (including that section as applied by regulation 4 of the Community Trade Mark Regulations 2006 (SI 2006/1027)); or

(d) under regulation 1C of the Community Design Regulations 2005 (SI 2005/2339).

114A Forfeiture of infringing copies, etc: England and Wales or Northern Ireland

(1) In England and Wales or Northern Ireland where there have come into the possession of any person in connection with the investigation or prosecution of a relevant offence--

(a) infringing copies of a copyright work, or

(b) articles specifically designed or adapted for making copies of a particular copyright work,

that person may apply under this section for an order for the forfeiture of the infringing copies or articles.

(2) For the purposes of this section "relevant offence" means--

(a) an offence under section 107(1), (2) or (2A) (criminal liability for making or dealing with infringing articles, etc),

(b) an offence under the Trade Descriptions Act 1968 (c 29),

(ba) an offence under the Business Protection from Misleading Marketing Regulations 2008,

(bb) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or

(c) an offence involving dishonesty or deception.

(3) An application under this section may be made--

(a) where proceedings have been brought in any court for a relevant offence relating to some or all of the infringing copies or articles, to that court, or

(b) where no application for the forfeiture of the infringing copies or articles has been made under paragraph (a), by way of complaint to a magistrates' court.

(4) On an application under this section, the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles.

(5) A court may infer for the purposes of this section that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(6) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision--

(a) in England and Wales, to the Crown Court, or

(b) in Northern Ireland, to the county court.

(7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 (c 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (SI 1981/1675 (NI 26)) (statement of case)).

(8) Subject to subsection (9), where any infringing copies or articles are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.

(9) On making an order under this section the court may direct that the infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate.

114B Forfeiture of infringing copies, etc: Scotland

(1) In Scotland the court may make an order under this section for the forfeiture of any--

(a) infringing copies of a copyright work, or

(b) articles specifically designed or adapted for making copies of a particular copyright work.

(2) An order under this section may be made--

(a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (c 46), or

(b) where a person is convicted of a relevant offence, in addition to any other penalty which the court may impose.

(3) On an application under subsection (2)(a), the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles.

(4) The court may infer for the purposes of this section that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) The procurator-fiscal making the application under subsection (2)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the infringing copies or articles to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the infringing copies or articles should not be forfeited.

(6) Service under subsection (5) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise to have an interest in, infringing copies or articles to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the infringing copies or articles should not be forfeited.

(8) The court shall not make an order following an application under subsection (2)(a)-

(a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved, or

(b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.

(9) Where an order for the forfeiture of any infringing copies or articles is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why infringing copies or articles should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension.

(10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 (c 46) shall apply to an appeal under subsection (9) as it applies to a stated case under Part 2 of that Act.

(11) An order following an application under subsection (2)(a) shall not take effect--

(a) until the end of the period of 21 days beginning with the day after the day on which the order is made, or

(b) if an appeal is made under subsection (9) above within that period, until the appeal is determined or abandoned.

(12) An order under subsection (2)(b) shall not take effect--

(a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995, or

(b) if an appeal is made within that period, until the appeal is determined or abandoned.

(13) Subject to subsection (14), infringing copies or articles forfeited under this section shall be destroyed in accordance with such directions as the court may give.

(14) On making an order under this section the court may direct that the infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate.

(15) For the purposes of this section--

"relevant offence" means--

(a) an offence under section 107(1), (2) or (2A) (criminal liability for making or dealing with infringing articles, etc),

(b) an offence under the Trade Descriptions Act 1968,

(c) an offence under the Business Protection from Misleading Marketing Regulations 2008,

(d) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or

(e) any offence involving dishonesty or deception;

"the court" means--

(a) in relation to an order made on an application under subsection (2)(a), the sheriff, and

(b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.

115 Jurisdiction of county court and sheriff court

(1) In England, Wales and Northern Ireland a county court may entertain proceedings under--

section 99 (order for delivery up of infringing copy or other article),

section 101(5) (order as to exercise of rights by copyright owner where exclusive licensee has concurrent rights), or

section 114 (order as to disposal of infringing copy or other article),

save that, in Northern Ireland, a county court may entertain such proceedings only where the value of the infringing copies and other articles in question does not exceed the county court limit for actions in tort.

(2) In Scotland proceedings for an order under any of those provisions may be brought in the sheriff court.

(3) Nothing in this section shall be construed as affecting the jurisdiction of the High Court or, in Scotland, the Court of Session.

Chapter VII

Copyright Licensing

Licensing schemes and licensing bodies

116 Licensing schemes and licensing bodies

(1) In this Part a "licensing scheme" means a scheme setting out--

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

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

and for this purpose a "scheme" includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) In this Chapter a "licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.

(3) In this section "copyright licences" means licences to do, or authorise the doing of, any of the acts restricted by copyright.

(4) References in this Chapter to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only--

(a) a single collective work or collective works of which the authors are the same, or

(b) works made by, or by employees of or commissioned by, a single individual, firm, company or group of companies.

For this purpose a group of companies means a holding company and its subsidiaries, within the meaning of section 1159 of the Companies Act 2006.

(5) Schedule A1 confers powers to provide for the regulation of licensing bodies.

Orphan works licensing and extended collective licensing

116A Power to provide for licensing of orphan works

(1) The Secretary of State may by regulations provide for the grant of licences in respect of works that qualify as orphan works under the regulations.

(2) The regulations may--

(a) specify a person or a description of persons authorised to grant licences, or

(b) provide for a person designated in the regulations to specify a person or a description of persons authorised to grant licences

(3) The regulations must provide that, for a work to qualify as an orphan work, it is a requirement that the owner of copyright in it has not been found after a diligent search made in accordance with the regulations.

(4) The regulations may provide for the granting of licences to do, or authorise the doing of, any act restricted by copyright that would otherwise require the consent of the missing owner.

(5) The regulations must provide for any licence--

(a) to have effect as if granted by the missing owner;

(b) not to give exclusive rights;

(c) not to be granted to a person authorised to grant licences.

(6) The regulations may apply to a work although it is not known whether copyright subsists in it, and references to a missing owner and a right or interest of a missing owner are to be read as including references to a supposed owner and a supposed right or interest.

116B Extended collective licensing

(1) The Secretary of State may by regulations provide for a licensing body that applies to the Secretary of State under the regulations to be authorised to grant copyright licences in respect of works in which copyright is not owned by the body or a person on whose behalf the body acts.

(2) An authorisation must specify--

(a) the types of work to which it applies, and

(b) the acts restricted by copyright that the licensing body is authorised to license.

(3) The regulations must provide for the copyright owner to have a right to limit or exclude the grant of licences by virtue of the regulations.

(4) The regulations must provide for any licence not to give exclusive rights.

(5) In this section "copyright licences" has the same meaning as in section 116.

(6) Nothing in this section applies in relation to Crown copyright or Parliamentary copyright.

116C General provision about licensing under sections 116A and 116B

(1) This section and section 116D apply to regulations under sections 116A and 116B.

(2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.

(3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.

(4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including--

(a) the deduction of administrative costs;

(b) the period for which sums must be held;

(c) the treatment of sums after that period (as bona vacantia or otherwise).

(5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.

(6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision--

(a) for determining the rights and obligations of any person if a work ceases to qualify as an orphan work (or ceases to qualify by reference to any copyright owner), or if a rights owner exercises the right referred to in section 116B(3), while a licence is in force;

(b) about maintenance of registers and access to them;

(c) permitting the use of a work for incidental purposes including an application or search;

(d) for a right conferred by section 77 to be treated as having been asserted in accordance with section 78;

(e) for the payment of fees to cover administrative expenses.

116D Regulations under sections 116A and 116B

(1) The power to make regulations includes power--

(a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;

(b) to make transitional, transitory or saving provision;

(c) to make different provision for different purposes.

(2) Regulations under any provision may amend this Part, or any other enactment or subordinate legislation passed or made before that provision comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.

(3) Regulations may make provision by reference to guidance issued from time to time by any person.

(4) The power to make regulations is exercisable by statutory instrument.

(5) A statutory instrument containing regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

References and applications with respect to licensing schemes

117 Licensing schemes to which following sections apply

Sections 118 to 123 (references and applications with respect to licensing schemes) apply to licensing schemes which are operated by licensing bodies and cover works of more than one author, so far as they relate to licences for--

(a) copying the work,

(b) rental or lending of copies of the work to the public,

(c) performing, showing or playing the work in public, or

(d) communicating the work to the public;

and references in those sections to a licensing scheme shall be construed accordingly.

118 Reference of proposed licensing scheme to tribunal

(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) 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.

119 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 requires a licence in a case of a description to which the scheme applies, or

(b) an organisation claiming to be representative of such persons,

that person or organisation may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

(3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far 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.

120 Further reference of scheme to tribunal

(1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under section 118, 119 or 128A, or under this section, made an order with respect to the scheme, then, while the order remains in force--

(a) the operator of the scheme,

(b) a person claiming that he 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 refer the scheme again to the Tribunal so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases--

(a) within twelve 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, until the last three months before the expiry of the order.

(3) A scheme which 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.

121 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 him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal.

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

(a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted, or

(b) proposes terms for a licence which are unreasonable,

may apply to the Copyright Tribunal.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of subsection (2) if--

(a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or

(b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

122 Application for review of order as to entitlement to licence

(1) Where the Copyright Tribunal has made an order under section 121 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.

(2) An application shall not be made, except with the special leave of the Tribunal--

(a) within twelve months from the date of the order, or of the decision on a previous application under this section, or

(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in

accordance with the licensing scheme or, as the case may be, the circumstances of the case.

123 Effect of order of tribunal as to licensing scheme

(1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal--

(a) under section 118 (reference of terms of proposed scheme), or

(b) under section 119 or 120 (reference of existing scheme to Tribunal),

shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

(2) While the order is in force a person who in a case of a class to which the order applies--

(a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and

(b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in 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 it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

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) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

No such direction may be made where subsection (4) below applies.

(4) An order of the Tribunal under section 119 or 120 made with respect to a scheme which is certified for any purpose under section 143 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal.

(5) Where the Tribunal has made an order under section 121 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall if he--

(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 he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

References and applications with respect to licensing by licensing bodies

124 Licences to which following sections apply

Sections 125 to 128 (references and applications with respect to licensing by licensing bodies) apply to licences which are granted by a licensing body otherwise than in pursuance of a licensing scheme and cover works of more than one author, so far as they authorise--

(a) copying the work,

(b) rental or lending of copies of the work to the public,

(c) performing, showing or playing the work in public, or

(d) communicating the work to the public;

and references in those sections to a licence shall be construed accordingly.

125 Reference to tribunal of proposed licence

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

126 Reference to tribunal of expiring licence

(1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such an application may not be made until the last three months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.

(4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.

(5) An order of the Tribunal under this section may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

127 Application for review of order as to licence

(1) Where the Copyright Tribunal has made an order under section 125, 126 or 128B (where that order did not relate to a licensing scheme), the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.

(2) An application shall not be made, except with the special leave of the Tribunal--

(a) within twelve months from the date of the order or of the decision on a previous application under this section, or

(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

128 Effect of order of tribunal as to licence

(1) Where the Copyright Tribunal has made an order under section 125 or 126 and the order remains in force, the person entitled to the benefit of the order shall if he--

(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 he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

(2) The benefit of the order may be assigned--

(a) in the case of an order under section 125, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) in the case of an order under section 126, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order under section 125 or 126, or an order under section 127 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it 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.

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) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

Factors to be taken into account in certain classes of case

129 General considerations: unreasonable discrimination

In determining what is reasonable on a reference or application under this Chapter relating to a licensing scheme or licence, the Copyright 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 secure 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.

130 Licences for reprographic copying

Where a reference or application is made to the Copyright Tribunal under this Chapter relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, the Tribunal shall have regard to--

(a) the extent to which published editions of the works in question are otherwise available,

(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.

131 Licences for educational establishments in respect of works included in broadcasts

(1) This section applies to references or applications under this Chapter relating to licences for the recording by or on behalf of educational establishments of broadcasts which include copyright works, or the making of copies of such recordings, for educational purposes.

(2) The Copyright 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 have already received, or are entitled to receive, payment in respect of their inclusion.

132 Licences to reflect conditions imposed by promoters of events

(1) This section applies to references or applications under this Chapter in respect of licences relating to sound recordings, films or broadcasts which include, or are to include, any entertainment or other event.

(2) The Copyright Tribunal shall have regard to any conditions imposed by the promoters of the entertainment or other event; and, in particular, the Tribunal shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

(3) 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 event in consideration of the grant of facilities for making the recording, film or broadcast.

133 Licences to reflect payments in respect of underlying rights

(1) In considering what charges should be paid for a licence--

(a) on a reference or application under this Chapter relating to licences for the rental or lending of copies of a work, or

(b) on an application under section 142 (royalty or other sum payable for lending of certain works),

the Copyright Tribunal shall take into account any reasonable payments which the owner of the copyright in the work is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, to owners of copyright in works included in that work.

(2) On any reference or application under this Chapter relating to licensing in respect of the copyright in sound recordings, films or broadcasts, the Copyright Tribunal shall

take into account, in considering what charges should be paid for a licence, any reasonable payments which 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 or broadcast.

134 Licences in respect of works included in re-transmissions

(1) Subject to subsection (3A) this section applies to references or applications under this Chapter relating to licences to include in a broadcast--

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

(b) sound recordings or films,

where one broadcast ("the first transmission") is, by reception and immediate re-transmission, to be further broadcast ("the further transmission").

(2) So far as the further transmission is to the same area as the first transmission, the Copyright 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 which adequately remunerates him 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 was made, the Tribunal shall leave the further transmission out of account in considering what charges (if any) should be paid for licences for the first transmission.

(3A) This section does not apply in relation to any application under section 73A (royalty or other sum payable in pursuance of section 73(4)).

135 Mention of specific matters not to exclude other relevant considerations

The mention in sections 129 to 134 of specific matters to which the Copyright Tribunal is to have regard in certain classes of case does not affect the Tribunal's general obligation in any case to have regard to all relevant considerations.

Use as of right of sound recordings in broadcasts

135A Circumstances in which right available

(1) Section 135C applies to the inclusion in a broadcast of any sound recordings if--

(a) a licence to include those recordings in the broadcast could be granted by a licensing body or such a body could procure the grant of a licence to do so,

(b) the condition in subsection (2) or (3) applies, and

(c) the person including those recordings in the broadcast has complied with section 135B.

(2) Where the person including the recordings in the broadcast does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, such a licence, being a licence--

(a) whose terms as to payment for including the recordings in the broadcast would be acceptable to him or comply with an order of the Copyright Tribunal under section 135D relating to such a licence or any scheme under which it would be granted, and

(b) allowing unlimited needletime or such needletime as he has demanded.

(3) Where he holds a licence to include the recordings in the broadcast, the condition is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or such needletime as he has demanded, or refuses to do so on terms that fall within subsection (2)(a).

(4) The references in subsection (2) to refusing to grant, or procure the grant of, a licence, and in subsection (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.

(5) In the group of sections from this section to section 135G--

"broadcast" does not include any broadcast which is a transmission of the kind specified in section 6(1A)(b) or (c);

"needletime" means the time in any period (whether determined as a number of hours in the period or a proportion of the period, or otherwise) in which any proceedings may be included in a broadcast;

"sound recording" does not include a film sound track when accompanying a film.

(6) In sections 135B to 135G, "terms of payment" means terms as to payment for including sound recordings in a broadcast .

135B Notice of intention to exercise right

(1) A person intending to avail himself of the right conferred by section 135C must--

(a) give notice to the licensing body of his intention to exercise the right, asking the body to propose terms of payment, and

(b) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.

(2) Where he has a licence to include the recordings in a broadcast, the date specified in a notice under subsection (1)(b) must not be sooner than the date of expiry of that licence except in a case falling within section 135A(3).

(3) Before the person intending to avail himself of the right begins to exercise it, he must--

(a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so, and

(b) apply to the Tribunal under section 135D to settle the terms of payment.

135C Conditions for exercise of right

(1) A person who, on or after the date specified in a notice under section 135B(1)(b), includes in a broadcast any sound recordings in circumstances in which this section applies, and who--

(a) complies with any reasonable condition, notice of which has been given to him by the licensing body, as to inclusion in the broadcasting of those recordings,

(b) provides that body with such information about their inclusion in the broadcast as it may reasonably require, and

(c) makes the payments to the licensing body that are required by this section,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question.

(2) Payments are to be made at not less than quarterly intervals in arrears.

(3) The amount of any payment is that determined in accordance with any order of the Copyright Tribunal under section 135D or, if no such order has been made--

(a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under section 135B, or

(b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under section 135B(1)(b).

(4) Where this section applies to the inclusion in a broadcast of any sound recordings, it does so in place of any licence.

135D Applications to settle payments

(1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(2) An order under subsection (1) has effect from the date the applicant begins to exercise the right conferred by section 135C and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

135E References etc about conditions, information and other terms

(1) A person exercising the right conferred by section 135C, or who has given notice to the Copyright Tribunal of his intention to do so, may refer to the Tribunal--

(a) any question whether any condition as to the inclusion in a broadcast of sound recordings, notice of which has been given to him by the licensing body in question, is a reasonable condition, or

(b) any question whether any information is information which the licensing body can reasonably require him to provide.

(2) On a reference under this section, the Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

135F Application for review of order

(1) A person exercising the right conferred by section 135C or the licensing body may apply to the Copyright Tribunal to review any order under section 135D or 135E.

(2) An application shall not be made, except with the special leave of the Tribunal--

(a) within twelve 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 fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.

(3) On the application the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An order under this section has effect from the date on which it is made or such later date as may be specified by the Tribunal.

135G Factors to be taken into account

(1) In determining what is reasonable on an application or reference under section 135D or 135E, or on reviewing any order under section 135F, the Copyright Tribunal shall--

(a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by section 135C, and

(b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.

(2) In settling the terms of payment under section 135D, the Tribunal shall not be guided by any order it has made under any enactment other than that section.

(3) Section 134 (factors to be taken into account: retransmissions) applies on an application or reference under sections 135D to 135F as it applies on an application or reference relating to a licence.

135H Power to amend sections 135A to 135G

(1) The Secretary of State may by order, subject to such transitional provision as appears to him to be appropriate, amend sections 135A to 135G so as--

(a) to include in any reference to sound recordings any works of a description specified in the order; or

(b) to exclude from any reference to a broadcast any broadcast of a description so specified.

(2) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

Implied indemnity in schemes or licences for reprographic copying

136 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 arrangement 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 him by reason of his having infringed copyright by making or authorising the making of reprographic copies of a work in circumstances within the apparent scope of his licence.

(3) 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 that it 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 "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 him for infringement of copyright as it applies to sums which he 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 his liability to indemnify.

Reprographic copying by educational establishments

137 Power to extend coverage of scheme or licence

(1) This section applies to--

(a) a licensing scheme to which sections 118 to 123 apply (see section 117) and which is operated by a licensing body, or

(b) a licence to which sections 125 to 128 apply (see section 124),

so far as it provides for the grant of licences, or is a licence, authorising the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of published literary, dramatic, musical or artistic works, or of the typographical arrangement of published editions.

(2) If it appears to the Secretary of State with respect to a scheme or licence to which this section applies that--

(a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it, and

(b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners,

he may by order provide that the scheme or licence shall extend to those works.

(3) Where he proposes to make such an order, the Secretary of State shall give notice of the proposal to--

(a) the copyright owners,

(b) the licensing body in question, and

(c) such persons or organisations representative of educational establishments, and such other persons or organisations, as the Secretary of State thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Secretary of State about the proposal within six months from the

date of the notice; and if any of them wishes to make oral representations, the Secretary of State shall appoint a person to hear the representations and report to him.

(5) In considering whether to make an order the Secretary of State shall take into account any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.

138 Variation or discharge of order extending scheme or licence

(1) The owner of the copyright in a work in respect of which an order is in force under section 137 may apply to the Secretary of State for the variation or discharge of the order, stating his reasons for making the application.

(2) The Secretary of State shall not entertain an application made within two years of the making of the original order, or of the making of an order on a previous application under this section, unless it appears to him that the circumstances are exceptional.

(3) On considering the reasons for the application the Secretary of State may confirm the order forthwith; if he does not do so, he shall give notice of the application to--

(a) the licensing body in question, and

(b) such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Secretary of State about the application within the period of two months from the date of the notice; and if any of them wishes to make oral representations, the Secretary of State shall appoint a person to hear the representations and report to him.

(5) In considering the application the Secretary of State shall take into account the reasons for the application, any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.

(6) The Secretary of State may make such order as he thinks fit confirming or discharging the order (or, as the case may be, the order as previously varied), or varying (or further varying) it so as to exclude works from it.

139 Appeals against orders

(1) The owner of the copyright in a work which is the subject of an order under section 137 (order extending coverage of scheme or licence) may appeal to the Copyright Tribunal which may confirm or discharge the order, or vary it so as to exclude works from it, as it thinks fit having regard to the considerations mentioned in subsection (2) of that section.

(2) Where the Secretary of State has made an order under section 138 (order confirming, varying or discharging order extending coverage of scheme or licence)--

(a) the person who applied for the order, or

(b) any person or organisation representative of educational establishments who was given notice of the application for the order and made representations in accordance with subsection (4) of that section,

may appeal to the Tribunal which may confirm or discharge the order or make any other order which the Secretary of State might have made.

(3) An appeal under this section shall be brought within six weeks of the making of the order or such further period as the Tribunal may allow.

(4) An order under section 137 or 138 shall not come into effect until the end of the period of six weeks from the making of the order or, if an appeal is brought before the end of that period, until the appeal proceedings are disposed of or withdrawn.

(5) If an appeal is brought after the end of that period, any decision of the Tribunal on the appeal does not affect the validity of anything done in reliance on the order appealed against before that decision takes effect.

140 Inquiry whether new scheme or general licence required

(1) The Secretary of State may appoint a person to inquire into the question whether new provision is required (whether by way of a licensing scheme or general licence) to authorise the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of--

(a) published literary, dramatic, musical or artistic works, or

(b) the typographical arrangement of published editions,

of a description which appears to the Secretary of State not to be covered by an existing licensing scheme or general licence and not to fall within the power conferred by section 137 (power to extend existing schemes and licences to similar works).

(2) The procedure to be followed in relation to an inquiry shall be such as may be prescribed by regulations made by the Secretary of State.

(3) The regulations shall, in particular, provide for notice to be given to--

(a) persons or organisations appearing to the Secretary of State to represent the owners of copyright in works of that description, and

(b) persons or organisations appearing to the Secretary of State to represent educational establishments,

and for the making of written or oral representations by such persons; but without prejudice to the giving of notice to, and the making of representations by, other persons and organisations.

(4) The person appointed to hold the inquiry shall not recommend the making of new provision unless he is satisfied--

(a) that it would be of advantage to educational establishments to be authorised to make reprographic copies of the works in question, and

(b) that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners.

(5) If he does recommend the making of new provision he shall specify any terms, other than terms as to charges payable, on which authorisation under the new provision should be available.

(6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section (and section 141) a "general licence" means a licence granted by a licensing body which covers all works of the description to which it applies.

141 Statutory licence where recommendation not implemented

(1) The Secretary of State may, within one year of the making of a recommendation under section 140 by order provide that if, or to the extent that, provision has not been made in accordance with the recommendation, the making by or on behalf of an educational establishment, for the purposes of instruction, of reprographic copies of the works to which the recommendation relates shall be treated as licensed by the owners of the copyright in the works.

(2) For that purpose provision shall be regarded as having been made in accordance with the recommendation if--

(a) a certified licensing scheme has been established under which a licence is available to the establishment in question, or

(b) a general licence has been--

(i) granted to or for the benefit of that establishment, or

(ii) referred by or on behalf of that establishment to the Copyright Tribunal under section 125 (reference of terms of proposed licence), or

(iii) offered to or for the benefit of that establishment and refused without such a reference,

and the terms of the scheme or licence accord with the recommendation.

(3) The order shall also provide that any existing licence authorising the making of such copies (not being a licence granted under a certified licensing scheme or a general licence) shall cease to have effect to the extent that it is more restricted or more onerous than the licence provided for by the order.

(4) The order shall provide for the licence to be free of royalty but, as respects other matters, subject to any terms specified in the recommendation and to such other terms as the Secretary of State may think fit.

(5) The order may provide that where a copy which would otherwise be an infringing copy is made in accordance with the licence provided by the order but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

In this subsection "dealt with" means sold or let for hire, offered or exposed for sale or hire, or exhibited in public.

(6) The order shall not come into force until at least six months after it is made.

(7) An order may be varied from time to time, but not so as to include works other than those to which the recommendation relates or remove any terms specified in the recommendation, and may be revoked.

(8) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In this section a "certified licensing scheme" means a licensing scheme certified for the purposes of this section under section 143.

Royalty or other sum payable for lending of certain works

142 Royalty or other sum payable for lending of certain works

(1) An application to settle the royalty or other sum payable in pursuance of section 66 (lending of copies of certain copyright works) may be made to the Copyright Tribunal by the copyright owner or the person claiming to be treated as licensed by him.

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

(3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under subsection (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.

(5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

Certification of licensing schemes

143 Certification of licensing schemes

(1) A person operating or proposing to operate a licensing scheme may apply to the Secretary of State to certify the scheme for the purposes of--

(b) section 60 (abstracts of scientific or technical articles),

(c) section 66 (lending to public of copies of certain works),

(e) section 141 (reprographic copying of published works by educational establishments).

(2) The Secretary of State shall by order made by statutory instrument certify the scheme if he is satisfied that it--

(a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences, and

(b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.

(3) The scheme shall be scheduled to the order and the certification shall come into operation for the purposes of section ~~35,~~ 60, 66~~, 74~~ or 141, as the case may be--

(a) on such date, not less than eight weeks after the order is made, as may be specified in the order, or

(b) if the scheme is the subject of a reference under section 118 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that section comes into force or the reference is withdrawn.

(4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Secretary of State shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under section 118, 119 or 120, and may do so in any other case if he thinks fit.

(5) The order shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Secretary of State that it is no longer being operated according to its terms.

Powers exercisable in consequence of competition report

144 Powers exercisable in consequence of report of Competition Commission

(1) Subsection (1A) applies where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Office of Fair Trading or (as the case may be) the Competition Commission under section 12(5) of the Competition Act 1980 or section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations) consists of or includes--

(a) conditions in licences granted by the owner of copyright in a work restricting the use of the work by the licensee or the right of the copyright owner to grant other licences; or

(b) a refusal of a copyright owner to grant licences on reasonable terms.

(1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the copyright shall be available as of right.

(2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and 164(1) of, and paragraphs 5, 10 and 11 of Schedule 7 to, the Act of 2002 shall be construed accordingly.

(3) The Secretary of State, the Office of Fair Trading or (as the case may be) the Competition Commission shall only exercise the powers available by virtue of this section if he or it is satisfied that to do so does not contravene any Convention relating to copyright to which the United Kingdom is a party.

(4) The terms of a licence available by virtue of this section shall, in default of agreement, be settled by the Copyright Tribunal on an application by the person requiring the licence; and terms so settled shall authorise the licensee to do everything in respect of which a licence is so available.

(5) Where the terms of a licence are settled by the Tribunal, the licence has effect from the date on which the application to the Tribunal was made.

Compulsory collective administration of certain rights

144A Collective exercise of certain rights in relation to cable re-transmission

(1) This section applies to the right of the owner of copyright in a literary, dramatic, musical or artistic work, sound recording or film to grant or refuse authorisation for cable re-transmission of a wireless broadcast from another EEA state in which the work is included.

That right is referred to below as "cable re-transmission right".

(2) Cable re-transmission right may be exercised against a cable operator only through a licensing body.

(3) Where a copyright owner has not transferred management of his cable re-transmission right to a licensing body, the licensing body which manages rights of the same category shall be deemed to be mandated to manage his right.

Where more than one licensing body manages rights of that category, he may choose which of them is deemed to be mandated to manage his right.

(4) A copyright owner to whom subsection (3) applies has the same rights and obligations resulting from any relevant agreement between the cable operator and the licensing body as have copyright owners who have transferred management of their cable re-transmission right to that licensing body.

(5) Any rights to which a copyright owner may be entitled by virtue of subsection (4) must be claimed within the period of three years beginning with the date of the cable re-transmission concerned.

(6) This section does not affect any rights exercisable by the maker of the broadcast, whether in relation to the broadcast or a work included in it.

(7) In this section--

"cable operator" means a person responsible for cable re-transmission of a wireless broadcast; and

"cable re-transmission" means the reception and immediate re-transmission by cable, including the transmission of microwave energy between terrestrial fixed points, of a wireless broadcast.

Chapter VIII

The Copyright Tribunal

The Tribunal

145 The Copyright Tribunal

(1) The Tribunal established under section 23 of the Copyright Act 1956 is renamed the Copyright Tribunal.

(2) The Tribunal shall consist of a chairman and two deputy chairmen appointed by the Lord Chancellor, after consultation with the Secretary of State, and not less than two or more than eight ordinary members appointed by the Secretary of State.

(3) A person is not eligible for appointment as chairman or deputy chairman unless--

(a) he satisfies the judicial-appointment eligibility condition on a 5-year basis;

(b) he is an advocate or solicitor in Scotland of at least 5 years' standing;

(c) he is a member of the Bar of Northern Ireland or solicitor of the Court of Judicature of Northern Ireland of at least 5 years' standing; or

(d) he has held judicial office.

146 Membership of the Tribunal

(1) The members of the Copyright Tribunal shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.

(2) A member of the Tribunal may resign his office by notice in writing to the Secretary of State or, in the case of the chairman or a deputy chairman, to the Lord Chancellor.

(3) The Secretary of State or, in the case of the chairman or a deputy chairman, the Lord Chancellor may by notice in writing to the member concerned remove him from office if--

(a) he has become bankrupt or made an arrangement with his creditors or, in Scotland, his estate has been sequestrated or he has executed a trust deed for his creditors or entered into a composition contract, or

(b) he is incapacitated by physical or mental illness,

or if he is in the opinion of the Secretary of State or, as the case may be, the Lord Chancellor otherwise unable or unfit to perform his duties as member.

(3A) A person who is the chairman or a deputy chairman of the Tribunal shall vacate his office on the day on which he attains the age of 70 years; but this subsection is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75 years).

(4) If a member of the Tribunal is by reason of illness, absence or other reasonable cause for the time being unable to perform the duties of his office, either generally or in relation to particular proceedings, a person may be appointed to discharge his duties for a period not exceeding six months at one time or, as the case may be, in relation to those proceedings.

(5) The appointment shall be made--

(a) in the case of the chairman or deputy chairman, by the Lord Chancellor, who shall appoint a person who would be eligible for appointment to that office, and

(b) in the case of an ordinary member, by the Secretary of State;

and a person so appointed shall have during the period of his appointment, or in relation to the proceedings in question, the same powers as the person in whose place he is appointed.

(6) The Lord Chancellor shall consult the Lord Advocate before exercising his powers under this section.

(7) The Lord Chancellor may exercise his powers to remove a person under subsection (3) or to appoint a person under subsection (4) only with the concurrence of the appropriate senior judge.

(8) The appropriate senior judge is the Lord Chief Justice of England and Wales, unless--

(a) the person to be removed exercises functions, or the person to be appointed is to exercise functions, wholly or mainly in Scotland, in which case it is the Lord President of the Court of Session, or

(b) the person to be removed exercises functions, or the person to be appointed is to exercise functions, wholly or mainly in Northern Ireland, in which case it is the Lord Chief Justice of Northern Ireland.

(9) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (7) in relation to the appointment of a person under subsection (4).

(10) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under subsection (7) in relation to the appointment of a person under subsection (4).

(11) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under subsection (7) in relation to the appointment of a person under subsection (4)--

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).

147 Financial provisions

(1) There shall be paid to the members of the Copyright Tribunal such remuneration (whether by way of salaries or fees), and such allowances, as the Secretary of State with the approval of the Treasury may determine.

(2) The Secretary of State may appoint such staff for the Tribunal as, with the approval of the Treasury as to numbers and remuneration, he may determine.

(3) The remuneration and allowances of members of the Tribunal, the remuneration of any staff and such other expenses of the Tribunal as the Secretary of State with the approval of the Treasury may determine shall be paid out of money provided by Parliament.

148 Constitution for purposes of proceedings

(1) For the purposes of any proceedings the Copyright Tribunal shall consist of--

(a) a chairman, who shall be either the chairman or a deputy chairman of the Tribunal, and

(b) two or more ordinary members.

(2) If the members of the Tribunal dealing with any matter are not unanimous, the decision shall be taken by majority vote; and if, in such a case, the votes are equal the chairman shall have a further, casting vote.

(3) Where part of any proceedings before the Tribunal has been heard and one or more members of the Tribunal are unable to continue, the Tribunal shall remain duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than three.

(4) If the chairman is unable to continue, the chairman of the Tribunal shall--

(a) appoint one of the remaining members to act as chairman, and

(b) appoint a suitably qualified person to attend the proceedings and advise the members on any questions of law arising.

(5) A person is "suitably qualified" for the purposes of subsection (4)(b) if he is, or is eligible for appointment as, a deputy chairman of the Tribunal.

Jurisdiction and procedure

149 Jurisdiction of the Tribunal

The function of the Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under--

(za) section 73 (determination of royalty or other remuneration to be paid with respect to re-transmission of broadcast including work);

(zb) section 93C (application to determine amount of equitable remuneration under section 93B);

(a) section 118, 119 or 120 (reference of licensing scheme);

(b) section 121 or 122 (application with respect to entitlement to licence under licensing scheme);

(c) section 125, 126 or 127 (reference or application with respect to licensing by licensing body);

(ca) section 128B (reference by the Secretary of State under section 128A);

(cc) section 135D or 135E (application or reference with respect to use as of right of sound recordings in broadcasts);

(d) section 139 (appeal against order as to coverage of licensing scheme or licence);

(e) section 142 (application to settle royalty or other sum payable for lending of certain works);

(f) section 144(4) (application to settle terms of copyright licence available as of right);

150 General power to make rules

(1) The Lord Chancellor may, after consultation with the Secretary of State, make rules for regulating proceedings before the Copyright Tribunal and, subject to the approval of the Treasury, as to the fees chargeable in respect of such proceedings.

(2) The rules may apply in relation to the Tribunal, as respects proceedings in England and Wales or Northern Ireland, any of the provisions of Part I of the Arbitration Act 1996.

(3) Provision shall be made by the rules--

(a) prohibiting the Tribunal from entertaining a reference under section 118, 119, or 120 by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent;

(b) specifying the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any person or organisation satisfying the Tribunal that they have a substantial interest in the matter; and

(c) requiring the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.

(4) The rules may make provision for regulating or prescribing any matters incidental to or consequential upon any appeal from the Tribunal under section 152 (appeal to the court on point of law).

(5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

151 Costs, proof of orders, &c

(1) The Copyright Tribunal may order that the costs of a party to proceedings before it shall be paid by such other party as the Tribunal may direct; and the Tribunal may tax or settle the amount of the costs, or direct in what manner they are to be taxed.

(2) A document purporting to be a copy of an order of the Tribunal and to be certified by the chairman to be a true copy shall, in any proceedings, be sufficient evidence of the order unless the contrary is proved.

(3) As respect proceedings in Scotland, the Tribunal has the like powers for securing the attendance of witnesses and the production of documents, and with regard to the examination of witnesses on oath, as an arbiter under a submission.

151A Award of interest

(1) Any of the following, namely--

(a) a direction under section 123(3) so far as relating to a licence for communicating a work to the public;

(b) a direction under section 128(3) so far as so relating;

(c) an order under section 135D(1); and

(d) an order under section 135F confirming or varying an order under section 135D(1),

may award simple interest at such rate and for such period, beginning not earlier than the relevant date and ending not later than the date of the order, as the Copyright Tribunal thinks reasonable in the circumstances.

(2) In this section "the relevant date" means--

(a) in relation to a direction under section 123(3), the date on which the reference was made;

(b) in relation to a direction under section 128(3), the date on which the reference or application was made;

(c) in relation to an order under section 135D(1), the date on which the first payment under section 135C(2) became due; and

(d) in relation to an order under section 135F, the date on which the application was made.

Appeals

152 Appeal to the court on point of law

(1) An appeal lies on any point of law arising from a decision of the Copyright Tribunal to the High Court or, in the case of proceedings of the Tribunal in Scotland, to the Court of Session.

(2) Provision shall be made by rules under section 150 limiting the time within which an appeal may be brought.

(3) Provision may be made by rules under that section--

(a) for suspending, or authorising or requiring the Tribunal to suspend, the operation of orders of the Tribunal in cases where its decision is appealed against;

(b) for modifying in relation to an order of the Tribunal whose operation is suspended the operation of any provision of this Act as to the effect of the order;

(c) for the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the Tribunal will be informed of its suspension.

Chapter IX

Qualification for and Extent of Copyright Protection

Qualification for copyright protection

153 Qualification for copyright protection

(1) Copyright does not subsist in a work unless the qualification requirements of this Chapter are satisfied as regards--

(a) the author (see section 154), or

(b) the country in which the work was first published (see section 155), or

(c) in the case of a broadcast, the country from which the broadcast was made (see section 156).

(2) Subsection (1) does not apply in relation to Crown copyright or Parliamentary copyright (see sections 163 to 166D) or to copyright subsisting by virtue of section 168 (copyright of certain international organisations).

(3) If the qualification requirements of this Chapter, or section 163, 165 or 168, are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

154 Qualification by reference to author

(1) A work qualifies for copyright protection if the author was at the material time a qualifying person, that is--

(a) a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject or a British protected person within the meaning of the British Nationality Act 1981, or

(b) an individual domiciled or resident in the United Kingdom or another country to which the relevant provisions of this Part extend, or

(c) a body incorporated under the law of a part of the United Kingdom or of another country to which the relevant provisions of this Part extend.

(2) Where, or so far as, provision is made by Order under section 159 (application of this Part to countries to which it does not extend), a work also qualifies for copyright protection if at the material time the author was a citizen or subject of, an individual domiciled or resident in, or a body incorporated under the law of, a country to which the Order relates.

(3) A work of joint authorship qualifies for copyright protection if at the material time any of the authors satisfies the requirements of subsection (1) or (2); but where a work qualifies for copyright protection only under this section, only those authors who satisfy those requirements shall be taken into account for the purposes of--

section 11(1) and (2) (first ownership of copyright; entitlement of author or author's employer),

section 12 (duration of copyright), and section 9(4) (meaning of "unknown authorship") so far as it applies for the purposes of section 12, and

section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author).

(4) The material time in relation to a literary, dramatic, musical or artistic work is--

(a) in the case of an unpublished work, when the work was made or, if the making of the work extended over a period, a substantial part of that period;

(b) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his death.

(5) The material time in relation to other descriptions of work is as follows--

(a) in the case of a sound recording or film, when it was made;

(b) in the case of a broadcast, when the broadcast was made;

(d) in the case of the typographical arrangement of a published edition, when the edition was first published.

155 Qualification by reference to country of first publication

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

(a) in the United Kingdom, or

(b) in another country to which the relevant provisions of this Part extend.

(2) Where, or so far as, provision is made by Order under section 159 (application of this Part to countries to which it does not extend), such a work also qualifies for copyright protection if it is first published in a country to which the Order relates.

(3) 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.

156 Qualification by reference to place of transmission

(1) A broadcast qualifies for copyright protection if it is made from a place in--

(a) the United Kingdom, or

(b) another country to which the relevant provisions of this Part extend.

(2) Where, or so far as, provision is made by Order under section 159 (application of this Part to countries to which it does not extend), a broadcast also qualifies for copyright protection if it is made from a place in a country to which the Order relates.

Extent and application of this Part

157 Countries to which this Part extends

(1) This Part extends to England and Wales, Scotland and Northern Ireland.

(2) Her Majesty may by Order in Council direct that this Part shall extend, subject to such exceptions and modifications as may be specified in the Order, to--

(a) any of the Channel Islands,

(b) the Isle of Man, or

(c) any colony.

(3) That power includes power to extend, subject to such exceptions and modifications as may be specified in the Order, any Order in Council made under the following provisions of this Chapter.

(4) The legislature of a country to which this Part has been extended may modify or add to the provisions of this Part, in their operation as part of the law of that country, as the legislature may consider necessary to adapt the provisions to the circumstances of that country--

(a) as regards procedure and remedies, or

(b) as regards works qualifying for copyright protection by virtue of a connection with that country.

(5) Nothing in this section shall be construed as restricting the extent of paragraph 36 of Schedule 1 (transitional provisions: dependent territories where the Copyright Act 1956 or the Copyright Act 1911 remains in force) in relation to the law of a dependent territory to which this Part does not extend.

158 Countries ceasing to be colonies

(1) The following provisions apply where a country to which this Part has been extended ceases to be a colony of the United Kingdom.

(2) As from the date on which it ceases to be a colony it shall cease to be regarded as a country to which this Part extends for the purposes of--

(a) section 160(2)(a) (denial of copyright protection to citizens of countries not giving adequate protection to British works), and

(b) sections 163 and 165 (Crown and Parliamentary copyright).

(3) But it shall continue to be treated as a country to which this Part extends for the purposes of sections 154 to 156 (qualification for copyright protection) until--

(a) an Order in Council is made in respect of that country under section 159 (application of this Part to countries to which it does not extend), or

(b) an Order in Council is made declaring that it shall cease to be so treated by reason of the fact that the provisions of this Part as part of the law of that country have been repealed or amended.

(4) A statutory instrument containing an Order in Council under subsection (3)(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

159 Application of this Part to countries to which it does not extend

(1) Her Majesty may by Order in Council make provision for applying in relation to a country to which this Part does not extend any of the provisions of this Part specified in the Order, so as to secure that those provisions--

(a) apply in relation to persons who are citizens or subjects of that country or are domiciled or resident there, as they apply to persons who are British citizens or are domiciled or resident in the United Kingdom, or

(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 a part of the United Kingdom, or

(c) apply in relation to works first published in that country as they apply in relation to works first published in the United Kingdom, or

(d) apply in relation to broadcasts made from that country as they apply in relation to broadcasts made from the United Kingdom.

(2) An Order may make provision for all or any of the matters mentioned in subsection (1) and may--

(a) apply any provisions of this Part subject to such exceptions and modifications as are specified in the Order; and

(b) direct that any provisions of this Part apply either generally or in relation to such classes of works, or other classes of case, as are specified in the Order.

(3) Except in the case of a Convention country or another member State of the European Economic Community, Her Majesty 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 works to which the Order relates, giving adequate protection to the owners of copyright under this Part.

(4) In subsection (3) "Convention country" means a country which is a party to a Convention relating to copyright to which the United Kingdom is also a party.

(5) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

160 Denial of copyright protection to citizens of countries not giving adequate protection to British works

(1) If it appears to Her Majesty that the law of a country fails to give adequate protection to British works to which this section applies, or to one or more classes of such works, Her Majesty may make provision by Order in Council in accordance with this section restricting the rights conferred by this Part in relation to works of authors connected with that country.

(2) An Order in Council 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 protection by virtue of such publication if at that time the authors are--

(a) citizens or subjects of that country (not domiciled or resident in the United Kingdom or another country to which the relevant provisions of this Part extend), or

(b) bodies incorporated under the law of that country;

and the Order may make such provision for all the purposes of this Part or for such purposes as are specified in the Order, and either generally or in relation to such class of cases as are specified in the Order, having regard to the nature and extent of that failure referred to in subsection (1).

(3) This section applies to literary, dramatic, musical and artistic works, sound recordings and films; and "British works" means works of which the author was a qualifying person at the material time within the meaning of section 154.

(4) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Supplementary

161 Territorial waters and the continental shelf

(1) For the purposes of this Part the territorial waters of the United Kingdom shall be treated as part of the United Kingdom.

(2) This Part applies to things done in the United Kingdom sector of the continental shelf on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as it applies to things done in the United Kingdom.

(3) The United Kingdom sector of the continental shelf means the areas designated by order under section 1(7) of the Continental Shelf Act 1964.

162 British ships, aircraft and hovercraft

(1) This Part applies to things done on a British ship, aircraft or hovercraft as it applies to things done in the United Kingdom.

(2) In this section--

"British ship" means a ship which is a British ship for the purposes of the Merchant Shipping Act 1995 otherwise than by virtue of registration in a country outside the United Kingdom; and

"British aircraft" and "British hovercraft" mean an aircraft or hovercraft registered in the United Kingdom.

Chapter X

Miscellaneous and General

Crown and Parliamentary copyright

163 Crown copyright

(1) Where a work is made by Her Majesty or by an officer or servant of the Crown in the course of his duties--

(a) the work qualifies for copyright protection notwithstanding section 153(1) (ordinary requirement as to qualification for copyright protection), and

(b) Her Majesty is the first owner of any copyright in the work.

(2) Copyright in such a work is referred to in this Part as "Crown copyright", notwithstanding that it may be, or have been, assigned to another person.

(3) Crown copyright in a literary, dramatic, musical or artistic work continues to subsist--

(a) until the end of the period of 125 years from the end of the calendar year in which the work was made, or

(b) if the work is published commercially before the end of the period of 75 years from the end of the calendar year in which it was made, until the end of the period of 50 years from the end of the calendar year in which it was first so published.

(4) In the case of a work of joint authorship where one or more but not all of the authors are persons falling within subsection (1), this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

(5) Except as mentioned above, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Crown copyright as to other copyright.

(6) This section does not apply to work if, or to the extent that, Parliamentary copyright subsists in the work (see sections 165 to 166D).

164 Copyright in Acts and Measures

(1) Her Majesty is entitled to copyright in every Act of Parliament Act of the Scottish Parliament, Measure of the National Assembly for Wales, Act of the National Assembly for Wales, Act of the Northern Ireland Assembly or Measure of the General Synod of the Church of England.

(2) The copyright subsists

(a) in the case of an Act or a Measure of the General Synod of the Church of England, until the end of the period of 50 years from the end of the calendar year in which Royal Assent was given, and

(b) in the case of a Measure of the National Assembly for Wales, until the end of the period of 50 years from the end of the calendar year in which the Measure was approved by Her Majesty in Council.

(3) References in this Part to Crown copyright (except in section 163) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Crown copyright.

(4) No other copyright, or right in the nature of copyright, subsists in an Act or Measure.

165 Parliamentary copyright

(1) Where a work is made by or under the direction or control of the House of Commons or the House of Lords--

(a) the work qualifies for copyright protection notwithstanding section 153(1) (ordinary requirement as to qualification for copyright protection), and

(b) the House by whom, or under whose direction or control, the work is made is the first owner of any copyright in the work, and if the work is made by or under the direction or control of both Houses, the two Houses are joint first owners of copyright.

(2) Copyright in such a work is referred to in this Part as "Parliamentary copyright", notwithstanding that it may be, or have been, assigned to another person.

(3) Parliamentary copyright in a literary, dramatic, musical or artistic work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made.

(4) For the purposes of this section, works made by or under the direction or control of the House of Commons or the House of Lords include--

(a) any work made by an officer or employee of that House in the course of his duties, and

(b) any sound recording, film or live broadcast of the proceedings of that House;

but a work shall not be regarded as made by or under the direction or control of either House by reason only of its being commissioned by or on behalf of that House.

(5) In the case of a work of joint authorship where one or more but not all of the authors are acting on behalf of, or under the direction or control of, the House of Commons or the House of Lords, this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

(6) Except as mentioned above, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Parliamentary copyright as to other copyright.

(7) The provisions of this section also apply, subject to any exceptions or modifications specified by Order in Council, to works made by or under the direction or control of any other legislative body of a country to which this Part extends; and references in this Part to "Parliamentary copyright" shall be construed accordingly.

(8) A statutory instrument containing an Order in Council under subsection (7) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

166 Copyright in Parliamentary Bills

(1) Copyright in every Bill introduced into Parliament belongs, in accordance with the following provisions, to one or both of the Houses of Parliament.

(2) Copyright in a public Bill belongs in the first instance to the House into which the Bill is introduced, and after the Bill has been carried to the second House to both Houses jointly, and subsists from the time when the text of the Bill is handed in to the House in which it is introduced.

(3) Copyright in a private Bill belongs to both Houses jointly and subsists from the time when a copy of the Bill is first deposited in either House.

(4) Copyright in a personal Bill belongs in the first instance to the House of Lords, and after the Bill has been carried to the House of Commons to both Houses jointly, and subsists from the time when it is given a First Reading in the House of Lords.

(5) Copyright under this section ceases--

(a) on Royal Assent, or

(b) if the Bill does not receive Royal Assent, on the withdrawal or rejection of the Bill or the end of the Session:

Provided that, copyright in a Bill continues to subsist notwithstanding its rejection in any Session by the House of Lords if, by virtue of the Parliament Acts 1911 and 1949, it remains possible for it to be presented for Royal Assent in that Session.

(6) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.

(7) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having passed in one Session, is reintroduced in a subsequent Session.

166A Copyright in Bills of the Scottish Parliament

(1) Copyright in every Bill introduced into the Scottish Parliament belongs to the Scottish Parliamentary Corporate Body.

(2) Copyright under this section subsists from the time when the text of the Bill is handed in to the Parliament for introduction--

(a) until the Bill receives Royal Assent, or

(b) if the Bill does not receive Royal Assent, until it is withdrawn or rejected or no further parliamentary proceedings may be taken in respect of it.

(3) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.

(4) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having received Royal Assent, is later reintroduced into the Parliament.

166B Copyright in Bills of the Northern Ireland Assembly

(1) Copyright in every Bill introduced into the Northern Ireland Assembly belongs to the Northern Ireland Assembly Commission.

(2) Copyright under this section subsists from the time when the text of the Bill is handed in to the Assembly for introduction--

(a) until the Bill receives Royal Assent, or

(b) if the Bill does not receive Royal Assent, until it is withdrawn or rejected or no further proceedings of the Assembly may be taken in respect of it.

(3) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.

(4) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having received Royal Assent, is later reintroduced into the Assembly.

166C Copyright in proposed Measures of the National Assembly for Wales

(1) Copyright in every proposed Assembly Measure introduced into the National Assembly for Wales belongs to the National Assembly for Wales Commission.

(2) Copyright under this section subsists from the time when the text of the proposed Assembly Measure is handed in to the Assembly for introduction--

(a) until the proposed Assembly Measure is approved by Her Majesty in Council, or

(b) if the proposed Assembly Measure is not approved by Her Majesty in Council, until it is withdrawn or rejected or no further proceedings of the Assembly may be taken in respect of it.

(3) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.

(4) No other copyright, or right in the nature of copyright, subsists in a proposed Assembly Measure after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a proposed Assembly Measure which, not having been approved by Her Majesty in Council, is later reintroduced into the Assembly.

166D Copyright in Bills of the National Assembly for Wales

(1) Copyright in every Bill introduced into the National Assembly for Wales belongs to the National Assembly for Wales Commission.

(2) Copyright under this section subsists from the time when the text of the Bill is handed in to the Assembly for introduction--

(a) until the Bill receives Royal Assent, or

(b) if the Bill does not receive Royal Assent, until it is withdrawn or rejected or no further proceedings of the Assembly may be taken in respect of it.

(3) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.

(4) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having received Royal Assent, is later reintroduced into the Assembly.

167 Houses of Parliament: supplementary provisions with respect to copyright

(1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, each House of Parliament shall be treated as having the legal capacities of a body corporate, which shall not be affected by a prorogation or dissolution.

(2) The functions of the House of Commons as owner of copyright shall be exercised by the Speaker on behalf of the House; and if so authorised by the Speaker, or in case of a vacancy in the office of Speaker, those functions may be discharged by the Chairman of Ways and Means or a Deputy Chairman.

(3) For this purpose a person who on the dissolution of Parliament was Speaker of the House of Commons, Chairman of Ways and Means or a Deputy Chairman may continue to act until the corresponding appointment is made in the next Session of Parliament.

(4) The functions of the House of Lords as owner of copyright shall be exercised by the Clerk of the Parliaments on behalf of the House; and if so authorised by him, or in case of a vacancy in the office of Clerk of the Parliaments, those functions may be discharged by the Clerk Assistant or the Reading Clerk.

(5) Legal proceedings relating to copyright--

(a) shall be brought by or against the House of Commons in the name of "The Speaker of the House of Commons"; and

(b) shall be brought by or against the House of Lords in the name of "The Clerk of the Parliaments".

Other miscellaneous provisions

168 Copyright vesting in certain international organisations

(1) Where an original literary, dramatic, musical or artistic work--

(a) is made by an officer or employee of, or is published by, an international organisation to which this section applies, and

(b) does not qualify for copyright protection under section 154 (qualification by reference to author) or section 155 (qualification by reference to country of first publication),

copyright nevertheless subsists in the work by virtue of this section and the organisation is first owner of that copyright.

(2) The international organisations to which this section applies are those as to which Her Majesty has by Order in Council declared that it is expedient that this section should apply.

(3) Copyright of which an international organisation is first owner by virtue of this section continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made or such longer period as may be specified by Her Majesty by Order in Council for the purpose of complying with the international obligations of the United Kingdom.

(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 purpose of holding, dealing with and enforcing copyright and in connection with all legal proceedings relating to copyright.

(5) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

169 Folklore, etc: anonymous unpublished works

(1) Where in the case of an unpublished literary, dramatic, musical or artistic work of unknown authorship there is evidence that the author (or, in the case of a joint work, any

of the authors) was a qualifying individual by connection with a country outside the United Kingdom, it shall be presumed until the contrary is proved that he was such a qualifying individual and that copyright accordingly subsists in the work, subject to the provisions of this Part.

(2) If under the law of that country a body is appointed to protect and enforce copyright in such works, Her Majesty may by Order in Council designate that body for the purposes of this section.

(3) A body so designated shall be recognised in the United Kingdom as having authority to do in place of the copyright owner anything, other than assign copyright, which it is empowered to do under the law of that country; and it may, in particular, bring proceedings in its own name.

(4) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In subsection (1) a "qualifying individual" means an individual who at the material time (within the meaning of section 154) was a person whose works qualified under that section for copyright protection.

(6) This section does not apply if there has been an assignment of copyright in the work by the author of which notice has been given to the designated body; and nothing in this section affects the validity of an assignment of copyright made, or licence granted, by the author or a person lawfully claiming under him.

Transitional provisions and savings

170 Transitional provisions and savings

(1) Schedule 1 contains transitional provisions and savings relating to works made, and acts or events occurring, before the commencement of this Part, and otherwise with respect to the operation of the provisions of this Part.

(2) The Secretary of State may by regulations amend Schedule 1 to reduce the duration of copyright in existing works which are unpublished, other than photographs or films.

(3) The regulations may provide for the copyright to expire--

(a) with the end of the term of protection of copyright laid down by Directive 2006/116/EC or at any later time;

(b) subject to that, on the commencement of the regulations or at any later time.

(4) "Existing works" has the same meaning as in Schedule 1.

(5) Regulations under subsection (2) may--

(a) make different provision for different purposes;

(b) make supplementary or transitional provision;

(c) make consequential provision, including provision amending any enactment or subordinate legislation passed or made before that subsection comes into force.

(6) The power to make regulations under subsection (2) is exercisable by statutory instrument.

(7) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.

171 Rights and privileges under other enactments or the common law

(1) Nothing in this Part affects--

(a) any right or privilege of any person under any enactment (except where the enactment is expressly repealed, amended or modified by this Act);

(b) any right or privilege of the Crown subsisting otherwise than under an enactment;

(c) any right or privilege of either House of Parliament;

(d) the right of the Crown or any person deriving title from the Crown to sell, use or otherwise deal with articles 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 those savings, no copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Part or some other enactment in that behalf.

(3) Nothing in this Part affects any rule of law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise.

(4) Nothing in this Part affects any right of action or other remedy, whether civil or criminal, available otherwise than under this Part in respect of acts infringing any of the rights conferred by Chapter IV (moral rights).

(5) The savings in subsection (1) have effect subject to section 164(4) and section 166(7) (copyright in Acts, Measures and Bills: exclusion of other rights in the nature of copyright).

Interpretation

172 General provisions as to construction

(1) This Part restates and amends the law of copyright, that is, the provisions of the Copyright Act 1956, as amended.

(2) A provision of this Part which corresponds to a provision of the previous law shall not be construed as departing from the previous law merely because of a change of expression.

(3) Decisions under the previous law may be referred to for the purpose of establishing whether a provision of this Part departs from the previous law, or otherwise for establishing the true construction of this Part.

172A Meaning of EEA and related expressions

(1) In this Part--

"the EEA" means the European Economic Area; and

"EEA state" means a member State, Iceland, Liechtenstein or Norway.

(2) References in this Part to a person being a national of an EEA State shall be construed in relation to a body corporate as references to its being incorporated under the law of an EEA state.

173 Construction of references to copyright owner

(1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Part is the person who is entitled to the aspect of copyright relevant for that purpose.

(2) Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in this Part to the copyright owner are to all the owners, so that, in particular, any requirement of the licence of the copyright owner requires the licence of all of them.

174 Meaning of "educational establishment" and related expressions

(1) The expression "educational establishment" in a provision of this Part means--

(a) any school, and

(b) any other description of educational establishment specified for the purposes of this Part, or that provision, by order of the Secretary of State.

(2) The Secretary of State may by order provide that the provisions of this Part relating to educational establishments shall apply, with such modifications and adaptations as may be specified in the order, in relation to teachers who are employed by a local authority (as defined in section 579(1) of the Education Act 1996) or (in Northern Ireland) a local education authority, to give instruction elsewhere to pupils who are unable to attend an educational establishment.

(3) In subsection (1)(a) "school"--

(a) in relation to England and Wales, has the same meaning as in the Education Act 1996;

(b) in relation to Scotland, has the same meaning as in the Education (Scotland) Act 1962, except that it includes an approved school within the meaning of the Social Work (Scotland) Act 1968; and

(c) in relation to Northern Ireland, has the same meaning as in the Education and Libraries (Northern Ireland) Order 1986.

(4) An order under subsection (1)(b) may specify a description of educational establishment by reference to the instruments from time to time in force under any enactment specified in the order.

(5) In relation to an educational establishment the expressions "teacher" and "pupil" in this Part include, respectively, any person who gives and any person who receives instruction.

(6) References in this Part to anything being done "on behalf of" an educational establishment are to its being done for the purposes of that establishment by any person.

(7) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

175 Meaning of publication and commercial publication

(1) In this Part "publication", in relation to a work--

(a) means the issue of copies 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 related expressions shall be construed accordingly.

(2) In this Part "commercial publication", in relation to a literary, dramatic, musical or artistic work means--

(a) issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public, or

(b) making the work available to the public by means of an electronic retrieval system;

and related expressions shall be construed accordingly.

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

(4) The following do not constitute publication for the purposes of this Part and references to commercial publication shall be construed accordingly--

(a) in the case of a literary, dramatic or musical work--

(i) the performance of the work, or

(ii) the communication to the public of the work (otherwise than for the purposes of an electronic retrieval system);

(b) in the case of an artistic work--

(i) the exhibition of the work,

(ii) the issue to the public of copies of a graphic work representing, or of photographs of, a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship,

(iii) the issue to the public of copies of a film including the work, or

(iv) the communication to the public of the work (otherwise than for the purposes of an electronic retrieval system);

(c) in the case of a sound recording or film--

(i) the work being played or shown in public, or

(ii) the communication to the public of the work.

(5) References in this Part to publication or commercial publication do not include publication which is merely colourable and not intended to satisfy the reasonable requirements of the public.

(6) No account shall be taken for the purposes of this section of any unauthorised act.

176 Requirement of signature: application in relation to body corporate

(1) The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal--

section 78(3)(b) (assertion by licensor of right to identification of author in case of public exhibition of copy made in pursuance of the licence),

section 90(3) (assignment of copyright),

section 91(1) (assignment of future copyright),

section 92(1) (grant of exclusive licence).

(2) The requirement in the following provisions that an instrument be signed by a person is satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal--

section 78(2)(b) (assertion by instrument in writing of right to have author identified),

section 87(2) (waiver of moral rights).

177 Adaptation of expressions for Scotland

In the application of this Part to Scotland--

"account of profits" means accounting and payment of profits;

"accounts" means count, reckoning and payment;

"assignment" means assignation;

"costs" means expenses;

"defendant" means defender;

"delivery up" means delivery;

"estoppel" means personal bar;

"injunction" means interdict;

"interlocutory relief" means interim remedy; and

"plaintiff" means pursuer.

178 Minor definitions

In this Part--

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

"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;

"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;

"country" includes any territory;

"the Crown" includes the Crown in right of the Scottish Administration, of the Welsh Assembly Government or of Her Majesty's Government in Northern Ireland or in any country outside the United Kingdom to which this Part extends;

"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", "employee", "employer" and "employment" refer to employment under a contract of service or of apprenticeship;

"facsimile copy" includes a copy which is reduced or enlarged in scale;

"international organisation" means an organisation the members of which include one or more states;

"judicial proceedings" includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person's legal rights or liabilities;

"parliamentary proceedings" includes proceedings of the Northern Ireland Assembly of the Scottish Parliament or of the European Parliament and Assembly proceedings within the meaning of section 1(5) of the Government of Wales Act 2006;

"private study" does not include any study which is directly or indirectly for a commercial purpose;

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

"public library" means a library administered by or on behalf of--

(a) in England and Wales, a library authority within the meaning of the Public Libraries and Museums Act 1964;

(b) in Scotland, a statutory library authority within the meaning of the Public Libraries (Scotland) Act 1955;

(c) in Northern Ireland, an Education or Library Board within the meaning of the Education and Libraries (Northern Ireland) Order 1986;

"rental right" means the right of a copyright owner to authorise or prohibit the rental of copies of the work (see section 18A);

"reprographic copy" and "reprographic copying" refer to copying by means of a reprographic process;

"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;

"sufficient acknowledgement" means an acknowledgement identifying the work in question by its title or other description, and identifying the author unless--

(a) in the case of a published work, it is published anonymously;

(b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry;

"sufficient disclaimer", in relation to an act capable of infringing the right conferred by section 80 (right to object to derogatory treatment of work), means a clear and reasonably prominent indication--

(a) given at the time of the act, and

(b) if the author or director is then identified, appearing along with the identification,

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

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

"typeface" includes an ornamental motif used in printing;

"unauthorised", as regards anything done in relation to a work, means done otherwise than--

(a) by or with the licence of the copyright owner, or

(b) if copyright does not subsist in the work, by or with the licence of the author or, in a case where section 11(2) would have applied, the author's employer or, in either case, persons lawfully claiming under him, or

(c) in pursuance of section 48 (copying, &c of certain material by the Crown);

"wireless broadcast" means a broadcast by means of wireless telegraphy;

"wireless telegraphy" means the sending of electro-magnetic energy over paths not provided by a material substance constructed or arranged for that purpose, but does not include the transmission of microwave energy between terrestrial fixed points;

"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" shall be construed accordingly.

179 Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)--

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Part II

Rights in Performances

Chapter I

Introductory

180 Rights conferred on performers and persons having recording rights

(1) Chapter 2 of this Part (economic rights) confers rights--

(a) on a performer, by requiring his consent to the exploitation of his performances (see sections 181 to 184), and

(b) on a person having recording rights in relation to a performance, in relation to recordings made without his consent or that of the performer (see sections 185 to 188),

and creates offences in relation to dealing with or using illicit recordings and certain other related acts (see sections 198 and 201).

(1A) Rights are also conferred on a performer by the following provisions of Chapter 3 of this Part (moral rights)--

(a) section 205C (right to be identified);

(b) section 205F (right to object to derogatory treatment of performance).

(2) In this Part--

"performance" means--

(a) a dramatic performance (which includes dance and mime),

(b) a musical performance,

(c) a reading or recitation of a literary work, or

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

which is, or so far as it is, a live performance given by one or more individuals; and

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

(a) made directly from the live performance,

(b) made from a broadcast of the performance, or

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

(3) The rights conferred by this Part apply in relation to performances taking place before the commencement of this Part; but no act done before commencement, or in pursuance of arrangements made before commencement, shall be regarded as infringing those rights.

(4) The rights conferred by this Part are independent of--

(a) any copyright in, or moral rights relating to, any work performed or any film or sound recording of, or broadcast including, the performance, and

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

181 Qualifying performances

A performance is a qualifying performance for the purposes of the provisions of this Part relating to performers' rights if it is given by a qualifying individual (as defined in section 206) or takes place in a qualifying country (as so defined).

Chapter II

Economic Rights

Performers' rights

182 Consent required for recording, &c of live performance

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

(a) makes a recording of the whole or any substantial part of a qualifying performance directly from the live performance,

(b) broadcasts live the whole or any substantial part of a qualifying performance,

(c) makes a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of the live performance.

(3) In an action for infringement of a performer's rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

182A Consent required for copying of recording

(1) A performer's rights are infringed by a person who, without his consent, makesa copy of a recording of the whole or any substantial part of a qualifying performance.

(1A) In subsection (1), making a copy of a recording includes making a copy which is transient or is incidental to some other use of the original recording.

(2) It is immaterial whether the copy is made directly or indirectly

(3) The right of a performer under this section to authorise or prohibit the making of such copies is referred to in this Chapter as "reproduction right".

182B Consent required for issue of copies to the public

(1) A performer's rights are infringed by a person who, without his consent, issues to the public copies of a recording of the whole or any substantial part of a qualifying performance.

(2) References in this Part to the issue to the public of copies of a recording are to--

(a) the act of putting into circulation in the EEA copies not previously put into circulation in the EEA by or with the consent of the performer, or

(b) the act of putting into circulation outside the EEA copies not previously put into circulation in the EEA or elsewhere.

(3) References in this Part to the issue to the public of copies of a recording do not include--

(a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see section 182C: consent required for rental or lending), or

(b) any subsequent importation of such copies into the United Kingdom or another EEA state,

except so far as paragraph (a) of subsection (2) applies to putting into circulation in the EEA copies previously put into circulation outside the EEA.

(4) References in this Part to the issue of copies of a recording of a performance include the issue of the original recording of the live performance.

(5) The right of a performer under this section to authorise or prohibit the issue of copies to the public is referred to in this Chapter as "distribution right".

182C Consent required for rental or lending of copies to public

(1) A performer's rights are infringed by a person who, without his consent, rents or lends to the public copies of a recording of the whole or any substantial part of a qualifying performance.

(2) In this Chapter, subject to the following provisions of this section--

(a) "rental" means making a copy of a recording available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage, and

(b) "lending" means making a copy of a recording available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public.

(3) The expressions "rental" and "lending" do not include--

(a) making available for the purpose of public performance, playing or showing in public or communication to the public;

(b) making available for the purpose of exhibition in public; or

(c) making available for on-the-spot reference use.

(4) The expression "lending" does not include making available between establishments which are accessible to the public.

(5) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.

(6) References in this Chapter to the rental or lending of copies of a recording of a performance include the rental or lending of the original recording of the live performance.

(7) In this Chapter--

"rental right" means the right of a performer under this section to authorise or prohibit the rental of copies to the public, and

"lending right" means the right of a performer under this section to authorise or prohibit the lending of copies to the public.

182CA Consent required for making available to the public

(1) A performer's rights are infringed by a person who, without his consent, makes available to the public a recording of the whole or any substantial part of a qualifying performance by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them.

(2) The right of a performer under this section to authorise or prohibit the making available to the public of a recording is referred to in this Chapter as "making available right.

182D Right to equitable remuneration for exploitation of sound recording

(1) Where a commercially published sound recording of the whole or any substantial part of a qualifying performance--

(a) is played in public, or

(b) is communicated to the public otherwise than by its being made available to the public in the way mentioned in section 182CA(1),

the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording or, where copyright in the sound recording has expired pursuant to section 191HA(4), from a person who plays the sound recording in public or communicates the sound recording to the public.

(1A) In subsection (1), the reference to publication of a sound recording includes making it available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

(2) The right to equitable remuneration under this section may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on his behalf.

The right is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes.

(3) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to the following provisions.

(4) In default of agreement as to the amount payable by way of equitable remuneration, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

(5) A person to or by whom equitable remuneration is payable may also apply to the Copyright Tribunal--

(a) to vary any agreement as to the amount payable, or

(b) to vary any previous determination of the Tribunal as to that matter;

but except with the special leave of the Tribunal no such application may be made within twelve months from the date of a previous determination.

An order made on an application under this subsection has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(6) On an application under this section the Tribunal shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the sound recording.

(7) An agreement is of no effect in so far as it purports--

(a) to exclude or restrict the right to equitable remuneration under this section, or

(b) to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Copyright Tribunal under this section.

(8) In this section "collecting society" means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration on behalf of more than one performer.

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

A performer's rights are infringed by a person who, without his consent--

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

(b) communicates to the public the whole or any substantial part of a qualifying performance,

by means of a recording which was, and which that person knows or has reason to believe was, made without the performer's consent.

184 Infringement of performer's rights by importing, possessing or dealing with illicit recording

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

(a) imports into the United Kingdom otherwise than for his private and domestic use, or

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

a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement of a performer's rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2) "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

Rights of person having recording rights

185 Exclusive recording contracts and persons having recording rights

(1) In this Chapter an "exclusive recording contract" means a contract between a performer and another person under which that person is entitled to the exclusion of all other persons (including the performer) to make recordings of one or more of his performances with a view to their commercial exploitation.

(2) References in this Chapter to a "person having recording rights", in relation to a performance, are (subject to subsection (3)) to a person--

(a) who is party to and has the benefit of an exclusive recording contract to which the performance is subject, or

(b) to whom the benefit of such a contract has been assigned,

and who is a qualifying person.

(3) If a performance is subject to an exclusive recording contract but the person mentioned in subsection (2) is not a qualifying person, references in this Chapter to a "person having recording rights" in relation to the performance are to any person--

(a) who is licensed by such a person to make recordings of the performance with a view to their commercial exploitation, or

(b) to whom the benefit of such a licence has been assigned,

and who is a qualifying person.

(4) In this section "with a view to commercial exploitation" means with a view to the recordings being sold or let for hire, or shown or played in public.

186 Consent required for recording of performance subject to exclusive contract

(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or that of the performer, makes a recording of the whole or any substantial part of the performance.

(2) In an action for infringement of those rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

187 Infringement of recording rights by use of recording made without consent

(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer--

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

(b) communicates to the public the whole or any substantial part of the performance,

by means of a recording which was, and which that person knows or has reason to believe was, made without the appropriate consent.

(2) The reference in subsection (1) to "the appropriate consent" is to the consent of--

(a) the performer, or

(b) the person who at the time the consent was given had recording rights in relation to the performance (or, if there was more than one such person, of all of them).

188 Infringement of recording rights by importing, possessing or dealing with illicit recording

(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer--

(a) imports into the United Kingdom otherwise than for his private and domestic use, or

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

a recording of the performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement of those rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2) "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

Exceptions to rights conferred

189 Acts permitted notwithstanding rights conferred by this Chapter

The provisions of Schedule 2 specify acts which may be done notwithstanding the rights conferred by this Chapter, being acts which correspond broadly to certain of those specified in Chapter III of Part I (acts permitted notwithstanding copyright).

190 Power of tribunal to give consent on behalf of performer in certain cases

(1) The Copyright Tribunal may, on the application of a person wishing to make a copy of a recording of a performance, give consent in a case where the identity or whereabouts of the person entitled to the reproduction right cannot be ascertained by reasonable inquiry.

(2) Consent given by the Tribunal has effect as consent of the person entitled to the reproduction right for the purposes of--

(a) the provisions of this Chapter relating to performers' rights, and

(b) section 198(3)(a) (criminal liability: sufficient consent in relation to qualifying performances),

and may be given subject to any conditions specified in the Tribunal's order.

(3) The Tribunal shall not give consent under subsection (1)(a) except after the service or publication of such notices as may be required by rules made under section 150 (general procedural rules) or as the Tribunal may in any particular case direct.

(5) In any case the Tribunal shall take into account the following factors--

(a) whether the original recording was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further recording;

(b) whether the making of the further recording is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original recording was made.

(6) Where the Tribunal gives consent under this section it shall, in default of agreement between the applicant and the person entitled to the reproduction right, make such order as it thinks fit as to the payment to be made to that person in consideration of consent being given.

Duration of rights

191 Duration of rights

(1) The following provisions have effect with respect to the duration of the rights conferred by this Chapter.

(2) The rights conferred by this Chapter in relation to a performance expire--

(a) at the end of the period of 50 years from the end of the calendar year in which the performance takes place, or

(b) if during that period a recording of the performance, other than a sound recording, is released, 50 years from the end of the calendar year in which it is released, or

(c) if during that period a sound recording of the performance is released, 70 years from the end of the calendar year in which it is released,

subject as follows.

(3) For the purposes of subsection (2) a recording is "released" when it is first published, played or shown in public or communicated to the public; but in determining whether a recording has been released no account shall be taken of any unauthorised act.

(4) Where a performer is not a national of an EEA state, the duration of the rights conferred by this Chapter in relation to his performance is that to which the performance is entitled in the country of which he is a national, provided that does not exceed the period which would apply under subsections (2) and (3).

(5) If or to the extent that the application of subsection (4) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of the rights conferred by this Chapter shall be as specified in subsections (2) and (3).

Performers' property rights

191A Performers' property rights

(1) The following rights conferred by this Chapter on a performer--

reproduction right (section 182A),

distribution right (section 182B),

rental right and lending right (section 182C),

making available right (section 182CA),

are property rights ("performer's property rights").

(2) References in this Chapter to the consent of the performer shall be construed in relation to a performer's property rights as references to the consent of the rights owner.

(3) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of a performer's property rights in relation to a performance, the rights owner for any purpose of this Chapter is the person who is entitled to the aspect of those rights relevant for that purpose.

(4) Where a performer's property rights (or any aspect of them) is owned by more than one person jointly, references in this Chapter to the rights owner are to all the owners, so that, in particular, any requirement of the licence of the rights owner requires the licence of all of them.

191B Assignment and licences

(1) A performer's property rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property

(2) An assignment or other transmission of a performer's property rights may be partial, that is, limited so as to apply--

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

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

(3) An assignment of a performer's property rights is not effective unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted by the owner of a performer's property rights is binding on every successor in title to his interest in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Chapter to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

191C Prospective ownership of a performer's property rights

(1) This section applies where by an agreement made in relation to a future recording of a performance, and signed by or on behalf of the performer, the performer purports to assign his performer's property rights (wholly or partially) to another person.

(2) If on the rights coming into existence the assignee or another person claiming under him would be entitled as against all other persons to require the rights to be vested in him, they shall vest in the assignee or his successor in title by virtue of this subsection.

(3) A licence granted by a prospective owner of a performer's property rights is binding on every successor in title to his interest (or prospective interest) in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser.

References in this Chapter to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

(4) In subsection (3) "prospective owner" in relation to a performer's property rights means a person who is prospectively entitled to those rights by virtue of such an agreement as is mentioned in subsection (1).

191D Exclusive licences

(1) In this Chapter an "exclusive licence" means a licence in writing signed by or on behalf of the owner of a performer's property rights authorising the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the rights owner.

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

191E Performer's property right to pass under will with unpublished original recording

Where under a bequest (whether general or specific) a person is entitled beneficially or otherwise to any material thing containing an original recording of a performance which 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 it, be construed as including any performer's rights in relation to the recording to which the testator was entitled immediately before his death.

191F Presumption of transfer of rental right in case of film production agreement

(1) Where an agreement concerning film production is concluded between a performer and a film producer, the performer shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising from the inclusion of a recording of his performance in the film.

(2) Where the section applies, the absence of signature by or on behalf of the performer does not exclude the operation of section 191C (effect of purported assignment of future rights).

(3) The reference in subsection (1) to an agreement concluded between a performer and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.

(4) Section 191G (right to equitable remuneration on transfer of rental right) applies where there is a presumed transfer by virtue of this section as in the case of an actual transfer.

191G Right to equitable remuneration where rental right transferred

(1) Where a performer has transferred his rental right concerning a sound recording or a film to the producer of the sound recording or film, he retains the right to equitable remuneration for the rental.

The reference above to the transfer of rental right by one person to another includes any arrangement having that effect, whether made by them directly or through intermediaries.

(2) The right to equitable remuneration under this section may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on his behalf.

The right is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes.

(3) Equitable remuneration under this section is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his.

(4) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to section 191H (reference of amount to Copyright Tribunal).

(5) An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this section.

(6) In this section a "collecting society" means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration on behalf of more than one performer.

191H Equitable remuneration: reference of amount to Copyright Tribunal

(1) In default of agreement as to the amount payable by way of equitable remuneration under section 191G, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

(2) A person to or by whom equitable remuneration is payable may also apply to the Copyright Tribunal--

(a) to vary any agreement as to the amount payable, or

(b) to vary any previous determination of the Tribunal as to that matter;

but except with the special leave of the Tribunal no such application may be made within twelve months from the date of a previous determination.

An order made on an application under this subsection has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(3) On an application under this section the Tribunal shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the film or sound recording.

(4) Remuneration shall not be considered inequitable merely because it was paid by way of a single payment or at the time of the transfer of the rental right.

(5) An agreement is of no effect in so far as it purports to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Copyright Tribunal under this section.

191HA Assignment of performer's property rights in a sound recording

(1) This section applies where a performer has by an agreement assigned the following rights concerning a sound recording to the producer of the sound recording--

(a) reproduction, distribution and making available rights, or

(b) performer's property rights.

(2) If, at the end of the 50-year period, the producer has failed to meet one or both of the following conditions, the performer may give a notice in writing to the producer of the performer's intention to terminate the agreement--

(a) condition 1 is to issue to the public copies of the sound recording in sufficient quantities;

(b) condition 2 is to make the sound recording available to the public by electronic transmission in such a way that a member of the public may access the recording from a place and at a time chosen by him or her.

(3) If, at any time after the end of the 50-year period, the producer, having met one or both of the conditions referred to in subsection (2), fails to do so, the performer may give a notice in writing to the producer of the performer's intention to terminate the agreement.

(4) If at the end of the period of 12 months beginning with the date of the notice, the producer has not met the conditions referred to in subsection (2), the agreement terminates and the copyright in the sound recording expires with immediate effect.

(5) An agreement is of no effect in so far as it purports to exclude or restrict the right to give a notice under subsection (2) or (3).

(6) A reference in this section to the assignment of rights includes any arrangement having that effect, whether made directly between the parties or through intermediaries.

(7) In this section--

"50-year period" means

(a) where the sound recording is published during the initial period, the period of 50 years from the end of the calendar year in which the sound recording is first published, or

(b) where during the initial period the sound recording is not published but is made available to the public by being played in public or communicated to the public, the period of 50 years from the end of the calendar year in which it was first made available to the public,

but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorised act,

"initial period" means the period beginning on the date the recording is made and ending 50 years from the end of the calendar year in which the sound recording is made,

"producer" means the person for the time being entitled to the copyright in the sound recording,

"sufficient quantities" means such quantity as to satisfy the reasonable requirements of the public for copies of the sound recording,

"unauthorised act" has the same meaning as in section 178.

191HB Payment in consideration of assignment

(1) A performer who, under an agreement relating to the assignment of rights referred to in section 191HA(1) (an "assignment agreement"), is entitled to a non-recurring payment in consideration of the assignment, is entitled to an annual payment for each relevant period from--

(a) the producer, or

(b) where the producer has granted an exclusive licence of the copyright in the sound recording, the licensee under the exclusive licence (the "exclusive licensee").

(2) In this section, "relevant period" means--

(a) the period of 12 months beginning at the end of the 50-year period, and

(b) each subsequent period of 12 months beginning with the end of the previous period, until the date on which copyright in the sound recording expires.

(3) The producer or, where relevant, the exclusive licensee gives effect to the entitlement under subsection (1) by remitting to a collecting society for distribution to the performer in accordance with its rules an amount for each relevant period equal to 20% of the gross revenue received during that period in respect of--

(a) the reproduction and issue to the public of copies of the sound recording, and

(b) the making available to the public of the sound recording by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

(4) The amount required to be remitted under subsection (3) is payable within 6 months of the end of each relevant period and is recoverable by the collecting society as a debt.

(5) Subsection (6) applies where--

(a) the performer makes a written request to the producer or, where relevant, the exclusive licensee for information in that person's possession or under that person's control to enable the performer--

(i) to ascertain the amount of the annual payment to which the performer is entitled under subsection (1), or

(ii) to secure its distribution by the collecting society, and

(b) the producer or, where relevant, the exclusive licensee does not supply the information within the period of 90 days beginning with the date of the request.

(6) The performer may apply to the county court, or in Scotland to the sheriff, for an order requiring the producer or, where relevant, the exclusive licensee to supply the information.

(7) An agreement is of no effect in so far as it purports to exclude or restrict the entitlement under subsection (1).

(8) In the event of any dispute as to the amount required to be remitted under subsection (3), the performer may apply to the Copyright Tribunal to determine the amount payable.

(9) Where a performer is entitled under an assignment agreement to recurring payments in consideration of the assignment, the payments must, from the end of the 50-year period, be made in full, regardless of any provision in the agreement which entitles the producer to withhold or deduct sums from the amounts payable.

(10) In this section--

"producer" and "50-year period" each has the same meaning as in section 191HA,

"exclusive licence" has the same meaning as in section 92, and

"collecting society" has the same meaning as in section 191G.

191I Infringement actionable by rights owner

(1) An infringement of a performer's property rights is actionable by the rights owner.

(2) In an action for infringement of a performer's property rights all such relief by 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 Chapter.

191J Provisions as to damages in infringement action

(1) Where in an action for infringement of a performer's property rights it is shown that at the time of the infringement the defendant did not know and had no reason to believe, that the rights subsisted in the recording to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

(2) The court may in an action for infringement of a performer's property rights 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.

191JA Injunctions against service providers

(1) The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe a performer's property right.

(2) In determining whether a service provider has actual knowledge for the purpose of this section, a court shall take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, shall have regard to--

(a) whether a service provider has received a notice through a means of contact made available in accordance with regulation 6(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013); and

(b) the extent to which any notice includes--

(i) the full name and address of the sender of the notice;

(ii) details of the infringement in question.

(3) In this section "service provider" has the meaning given to it by regulation 2 of the Electronic Commerce (EC Directive) Regulations 2002.

(4) Section 177 applies in respect of this section as it applies in respect of Part 1.

191K Undertaking to take licence of right in infringement proceedings

(1) If in proceedings for infringement of a performer's property rights in respect of which a licence is available as of right under paragraph 17 of Schedule 2A (powers exercisable in consequence of competition report) the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Copyright Tribunal under that paragraph--

(a) no injunction shall be granted against him,

(b) no order for delivery up shall be made under section 195, and

(c) the amount recoverable against him by way of damages or on an account of profits shall not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement.

(2) An undertaking may be given at any time before final order in the proceedings, without any admission of liability.

(3) Nothing in this section affects the remedies available in respect of an infringement committed before licences of right were available.

191L Rights and remedies for exclusive licensee

(1) An exclusive licensee has, except against the owner of a performer's property rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) His rights and remedies are concurrent with those of the rights owner; and references in the relevant provisions of this Chapter to the rights owner shall be construed accordingly.

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

191M Exercise of concurrent rights

(1) Where an action for infringement of a performer's property rights brought by the rights owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the rights owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as plaintiff or added as a defendant.

(2) A rights owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(3) The above provisions do not affect the granting of interlocutory relief on an application by the rights owner or exclusive licensee alone.

(4) Where an action for infringement of a performer's property rights is brought which relates (wholly or partly) to an infringement in respect of which the rights owner and an exclusive licensee have or had concurrent rights of action--

(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 of them in respect of the infringement;

(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 the other of them in respect of the infringement; and

(c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them;

and these provisions apply whether or not the rights owner and the exclusive licensee are both parties to the action.

(5) The owner of a performer's property rights shall notify any exclusive licensee having concurrent rights before applying for an order under section 195 (order for delivery up) or exercising the right conferred by section 196 (right of seizure); and the court may on the application of the licensee make such order under section 195 or, as the case may be, prohibiting or permitting the exercise by the rights owner of the right conferred by section 196, as it thinks fit having regard to the terms of the licence.

Non-property rights

192A Performers' non-property rights

(1) the rights conferred on a performer by--

section 182 (consent required for recording, &c of live performance),

section 183 (infringement of performer's rights by use of recording made without consent),

section 184 (infringement of performer's rights importing, possessing or dealing with illicit recording),

section 191HA (assignment of performer's property rights in a sound recording), and

section 191HB (payment in consideration of assignment),

are not assignable or transmissible, except to the following extent.

They are referred to in this Chapter as "performer's non-property rights".

(2) On the death of a person entitled to any such right--

(a) the right passes to such person as he may by testamentary disposition specifically direct, and

(b) if or to the extent that there is no such direction, the right is exercisable by his personal representatives.

(3) References in this Chapter to the performer, in the context of the person having any such right, shall be construed as references to the person for the time being entitled to exercise those rights.

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

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

192B Transmissibility of rights of person having recording rights

(1) The rights conferred by this Chapter on a person having recording rights are not assignable or transmissible.

(2) This does not affect section 185(2)(b) or (3)(b), so far as those provisions confer rights under this Chapter on a person to whom the benefit of a contract or licence is assigned.

193 Consent

(1) Consent for the purposes of this Chapter by a person having a performer's non-property rights, or by a person having recording rights, may be given in relation to a specific performance, a specified description of performances or performances generally, and may relate to past or future performances.

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

(3) Where a performer's non-property right 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.

194 Infringement actionable as breach of statutory duty

An infringement of--

(a) a performer's non-property rights, or

(b) any right conferred by this Chapter on a person having recording rights, is actionable by the person entitled to the right as a breach of statutory duty.

Delivery up or seizure of illicit recordings

195 Order for delivery up

(1) Where a person has in his possession, custody or control in the course of a business an illicit recording of a performance, a person having performer's rights or recording rights in relation to the performance under this Chapter may apply to the court

for an order that the recording be delivered up to him or to such other person as the court may direct.

(2) An application shall not be made after the end of the period specified in section 203; and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 204 (order as to disposal of illicit recording).

(3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 204 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

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

196 Right to seize illicit recordings

(1) An illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order under section 195, may be seized and detained by him or a person authorised by him.

The right to seize and detain is exercisable subject to the following conditions and is subject to any decision of the court under section 204 (order as to disposal of illicit recording).

(2) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.

(3) A person may for the purpose of exercising the right conferred by this section enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his and may not use any force.

(4) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

(5) In this section--

"premises" includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft; and

"prescribed" means prescribed by order of the Secretary of State.

(6) An order of the Secretary of State under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

197 Meaning of "illicit recording"

(1) In this Chapter "illicit recording", in relation to a performance, shall be construed in accordance with this section.

(2) For the purposes of a performer's rights, a recording of the whole or any substantial part of a performance of his is an illicit recording if it is made, otherwise than for private purposes, without his consent.

(3) For the purposes of the rights of a person having recording rights, a recording of the whole or any substantial part of a performance subject to the exclusive recording contract is an illicit recording if it is made, otherwise than for private purposes, without his consent or that of the performer.

(4) For the purposes of sections 198 and 199 (offences and orders for delivery up in criminal proceedings), a recording is an illicit recording if it is an illicit recording for the purposes mentioned in subsection (2) or subsection (3).

(5) In this Chapter "illicit recording" includes a recording falling to be treated as an illicit recording by virtue of any of the following provisions of Schedule 2--

paragraph 1B(5) and (7) (personal copies of recordings for private use),

paragraph 1D(3) (copies for text and data analysis for non-commercial research),

paragraph 3A(5) or (6) or 3B(10) (accessible copies of recordings made for disabled persons),

paragraph 6(5) (recording by educational establishments of broadcasts),

paragraph 6ZA(7) (copying and use of extracts of recordings by educational establishments),

paragraph 6F(5)(b) (copying by librarian: single copies of published recordings),

paragraph 6G(5)(b) (copying by librarians or archivists: single copies of unpublished recordings),

paragraph 12(2) (recordings of performance in electronic form retained on transfer of principal recording),

paragraph 14(6)(b) (recordings of folksongs),

paragraph 16(3) (recordings made for purposes of broadcast,

paragraph 17A(2) (recording for the purposes of time-shifting), or

paragraph 17B(2) (photographs of broadcasts),

but otherwise does not include a recording made in accordance with any of the provisions of that Schedule.

(6) It is immaterial for the purposes of this section where the recording was made.

197A Presumptions relevant to recordings of performances

(1) In proceedings brought by virtue of this Part with respect to the rights in a performance, where copies of a recording of the performance as issued to the public bear a statement that a named person was the performer, the statement shall be admissible as evidence of the fact stated and shall be presumed to be correct until the contrary is proved.

(2) Subsection (1) does not apply to proceedings for an offence under section 198 (criminal liability for making etc illicit recordings); but without prejudice to its application in proceedings for an order under section 199 (order for delivery up in criminal proceedings).

Offences

198 Criminal liability for making, dealing with or using illicit recordings

(1) A person commits an offence who without sufficient consent--

(a) makes for sale or hire, or

(b) imports into the United Kingdom otherwise than for his 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 Chapter, or

(d) in the course of a business--

(i) sells or lets for hire, or

(ii) offers or exposes for sale or hire, or

(iii) distributes,

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

(1A) A person who infringes a performer's making available right--

(a) in the course of a business, or

(b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the making available right,

commits an offence if he knows or has reason to believe that, by doing so, he is infringing the making available right in the recording.

(2) A person commits an offence who causes a recording of a performance made without sufficient consent to be--

(a) shown or played in public, or

(b) communicated to the public,

thereby infringing any of the rights conferred by this Chapter, if he knows or has reason to believe that those rights are thereby infringed.

(3) In subsections (1) and (2) "sufficient consent" means--

(a) in the case of a qualifying performance, the consent of the performer, and

(b) in the case of a non-qualifying performance subject to an exclusive recording contract--

(i) for the purposes of subsection (1)(a) (making of recording), the consent of the performer or the person having recording rights, and

(ii) for the purposes of subsection (1)(b), (c) and (d) and subsection (2) (dealing with or using recording), the consent of the person having recording rights.

The references in this subsection to the person having recording rights are to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them.

(4) No offence is committed under subsection (1) or (2) by the commission of an act which by virtue of any provision of Schedule 2 may be done without infringing the rights conferred by this Chapter.

(5) A person guilty of an offence under subsection (1)(a), (b) or (d)(iii) is liable--

(a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding £50,000, or both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding ten years, or both.

(5A) A person guilty of an offence under subsection (1A) is liable--

(a) on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £50,000, or both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.

(6) A person guilty of any other offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding six months, or both.

198A Enforcement by local weights and measures authority

(1) It is the duty of every local weights and measures authority to enforce within their area the provisions of section 198.

(2) The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of that section by such an authority as in relation to the enforcement of that Act--

section 27 (power to make test purchases),

section 28 (power to enter premises and inspect and seize goods and documents),

section 29 (obstruction of authorised officers), and

section 33 (compensation for loss, &c of goods seized).

(3) Subsection (1) above does not apply in relation to the enforcement of section 198 in Northern Ireland, but it is the duty of the Department of Economic Development to enforce that section in Northern Ireland.

For that purpose the provisions of the Trade Descriptions Act 1968 specified in subsection (2) apply as if for the references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.

(4) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if section 198 were contained in that Act and as if the functions of any person in relation to the enforcement of that section were functions under that Act.

(5) Nothing in this section shall be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence.

199 Order for delivery up in criminal proceedings

(1) The court before which proceedings are brought against a person for an offence under section 198 may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control in the course of a business an illicit recording of a performance, order that it be delivered up to a person having performers' rights or recording rights in relation to the performance or to such other person as the court may direct.

(2) For this purpose a person shall be treated as charged with an offence--

(a) in England, Wales and Northern Ireland, when he is orally charged or is served with a summons or indictment;

(b) in Scotland, when he is cautioned, charged or served with a complaint or indictment.

(3) An order may be made by the court of its own motion or on the application of the prosecutor (or, in Scotland, the Lord Advocate or procurator-fiscal), 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 specified in section 203 (period after which remedy of delivery up not available), or

(b) if it appears to the court unlikely that any order will be made under section 204 (order as to disposal of illicit recording).

(4) An appeal lies from an order made under this section by a magistrates' court--

(a) in England and Wales, to the Crown Court, and

(b) in Northern Ireland, to the county court;

and in Scotland, where an order has been made under this section, the person from whose possession, custody or control the illicit recording has been removed may, without prejudice to any other form of appeal under any rule of law, appeal against that order in the same manner as against sentence.

(5) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 204.

(6) Nothing in this section affects the powers of the court under section 143 of the Powers of Criminal Courts (Sentencing) Act 2000, Part II of the Proceeds of Crime (Scotland) Act 1995 or Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (general provisions as to forfeiture in criminal proceedings).

200 Search warrants

(1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing--

(a) that an offence under section 198(1) or (1A) (offences of making, importing, possessing, selling etc or distributing illicit recordings) has been or is about to be committed in any premises, and

(b) that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

(2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in section 9(2) of the Police and Criminal Evidence Act 1984 (certain classes of personal or confidential material).

(3) A warrant under subsection (1)--

(a) may authorise persons to accompany any constable executing the warrant, and

(b) remains in force for *28 days* three months from the date of its issue.

(3A) In executing a warrant issued under subsection (1) a constable may seize an article if he reasonably believes that it is evidence that any offence under section 198(1) or (1A) has been or is about to be committed.

(4) In this section "premises" includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

201 False representation of authority to give consent

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

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

202 Offence by body corporate: liability of officers

(1) Where an offence under this Chapter committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members "director" means a member of the body corporate.

Supplementary provisions with respect to delivery up and seizure

203 Period after which remedy of delivery up not available

(1) An application for an order under section 195 (order for delivery up in civil proceedings) may not be made after the end of the period of six years from the date on which the illicit recording in question was made, subject to the following provisions.

(2) If during the whole or any part of that period a person entitled to apply for an order--

(a) is under a disability, or

(b) is prevented by fraud or concealment from discovering the facts entitling him to apply,

an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

(3) In subsection (2) "disability"--

(a) in England and Wales, has the same meaning as in the Limitation Act 1980;

(b) in Scotland, means legal disability within the meaning of the Prescription and Limitations (Scotland) Act 1973;

(c) in Northern Ireland, has the same meaning as in the Statute of Limitation (Northern Ireland) 1958.

(4) An order under section 199 (order for delivery up in criminal proceedings) shall not, in any case, be made after the end of the period of six years from the date on which the illicit recording in question was made.

204 Order as to disposal of illicit recording

(1) An application may be made to the court for an order that an illicit recording of a performance delivered up in pursuance of an order under section 195 or 199, or seized and detained in pursuance of the right conferred by section 196, shall be--

(a) forfeited to such person having performer's rights or recording rights in relation to the performance as the court may direct, or

(b) destroyed or otherwise dealt with as the court may think fit,

or for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of the rights conferred by this Chapter would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

(3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the recording, and any such person is entitled--

(a) to appear in proceedings for an order under this section, whether or not he was served with notice, and

(b) to appeal against any order made, whether or not he appeared;

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

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

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

(6) References in this section to a person having an interest in a recording include any person in whose favour an order could be made in respect of the recording--

(a) under this section or under section 114 or 231 of this Act;

(b) under section 24D of the Registered Designs Act 1949;

(c) under section 19 of Trade Marks Act 1994 (including that section as applied by regulation 4 of the Community Trade Mark Regulations 2006 (SI 2006/1027)); or

(d) under regulation 1C of the Community Design Regulations 2005 (SI 2005/2339).

204A Forfeiture of illicit recordings: England and Wales or Northern Ireland

(1) In England and Wales or Northern Ireland where illicit recordings of a performance have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the illicit recordings.

(2) For the purposes of this section "relevant offence" means--

(a) an offence under section 198(1) or (1A) (criminal liability for making or dealing with illicit recordings),

(b) an offence under the Trade Descriptions Act 1968 (c 29),

(ba) an offence under the Business Protection from Misleading Marketing Regulations 2008,

(bb) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or

(c) an offence involving dishonesty or deception.

(3) An application under this section may be made--

(a) where proceedings have been brought in any court for a relevant offence relating to some or all of the illicit recordings, to that court, or

(b) where no application for the forfeiture of the illicit recordings has been made under paragraph (a), by way of complaint to a magistrates' court.

(4) On an application under this section, the court shall make an order for the forfeiture of any illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.

(5) A court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being part of the same consignment or batch or otherwise).

(6) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision--

(a) in England and Wales, to the Crown Court, or

(b) in Northern Ireland, to the county court.

(7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 (c 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (SI 1987/1675 (NI 26)) (statement of case)).

(8) Subject to subsection (9), where any illicit recordings are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.

(9) On making an order under this section the court may direct that the illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers' rights or recording rights in question or dealt with in such other way as the court considers appropriate.

204B Forfeiture: Scotland

(1) In Scotland the court may make an order under this section for the forfeiture of any illicit recordings.

(2) An order under this section may be made--

(a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (c 46), or

(b) where a person is convicted of a relevant offence, in addition to any other penalty which the court may impose.

(3) On an application under subsection (2)(a), the court shall make an order for the forfeiture of any illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.

(4) The court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being part of the same consignment or batch or otherwise).

(5) The procurator-fiscal making the application under subsection (2)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the illicit recordings to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the illicit recordings should not be forfeited.

(6) Service under subsection (5) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise to have an interest in, illicit recordings to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the illicit recordings should not be forfeited.

(8) The court shall not make an order following an application under subsection (2)(a)--

(a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved, or

(b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.

(9) Where an order for the forfeiture of any illicit recordings is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why the illicit recordings should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension.

(10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under subsection (9) as it applies to a stated case under Part 2 of that Act.

(11) An order following an application under subsection (2)(a) shall not take effect--

(a) until the end of the period of 21 days beginning with the day after the day on which the order is made, or

(b) if an appeal is made under subsection (9) above within that period, until the appeal is determined or abandoned.

(12) An order under subsection (2)(b) shall not take effect--

(a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995 (c 46), or

(b) if an appeal is made within that period, until the appeal is determined or abandoned.

(13) Subject to subsection (14), illicit recordings forfeited under this section shall be destroyed in accordance with such directions as the court may give.

(14) On making an order under this section the court may direct that the illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers' rights or recording rights in question or dealt with in such other way as the court considers appropriate.

(15) For the purposes of this section--

"relevant offence" means--

(a) an offence under section 198(1) or (1A) (criminal liability for making or dealing with illicit recordings),

(b) an offence under the Trade Descriptions Act 1968,

(c) an offence under the Business Protection from Misleading Marketing Regulations 2008,

(d) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or

(e) any offence involving dishonesty or deception;

"the court" means--

(a) in relation to an order made on an application under subsection (2)(a), the sheriff, and

(b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.

205 Jurisdiction of county court and sheriff court

(1) In England, Wales and Northern Ireland a county court may entertain proceedings under--

section 195 (order for delivery up of illicit recording), or

section 204 (order as to disposal of illicit recording),

save that, in Northern Ireland, a county court may entertain such proceedings only where the value of the illicit recordings in question does not exceed the county court limit for actions in tort.

(2) In Scotland proceedings for an order under either of those provisions may be brought in the sheriff court.

(3) Nothing in this section shall be construed as affecting the jurisdiction of the High Court or, in Scotland, the Court of Session.

Licensing of performers' rights

205A Licensing of performers' rights

The provisions of Schedule 2A have effect with respect to the licensing of performers' rights.

Jurisdiction of Copyright Tribunal

205B Jurisdiction of Copyright Tribunal

(1) The Copyright Tribunal has jurisdiction under this Chapter to hear and determine proceedings under--

(a) section 182D (amount of equitable remuneration for exploitation of commercial sound recording);

(b) section 190 (application to give consent on behalf of owner of reproduction right);

(c) section 191H (amount of equitable remuneration on transfer of rental right);

(cc) paragraph 19 of Schedule 2 (determination of royalty or other remuneration to be paid with respect to re-transmission of broadcast including performance or recording);

(d) paragraph 3,4 or 5 of Schedule 2A (reference of licensing scheme);

(e) paragraph 6 or 7 of that Schedule (application with respect to licence under licensing scheme);

(f) paragraph 10, 11 or 12 of that Schedule (reference or application with respect to licensing by licensing body);

(g) paragraph 15 of that Schedule (application to settle royalty for certain lending);

(h) paragraph 17 of that Schedule (application to settle terms of licence available as of right).

(2) The provisions of Chapter VIII of Part I (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this Chapter.

(3) Provision shall be made by rules under section 150 prohibiting the Tribunal from entertaining a reference under paragraph 3,4 or 5 of Schedule 2A (reference of licensing scheme) by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent.

Chapter III

Moral Rights

Right to be identified as performer

205C Right to be identified as performer

(1) Whenever a person--

(a) produces or puts on a qualifying performance that is given in public,

(b) broadcasts live a qualifying performance,

(c) communicates to the public a sound recording of a qualifying performance, or

(d) issues to the public copies of such a recording,

the performer has the right to be identified as such.

(2) The right of the performer under this section is--

(a) in the case of a performance that is given in public, to be identified in any programme accompanying the performance or in some other manner likely to bring his identity to the notice of a person seeing or hearing the performance,

(b) in the case of a performance that is broadcast, to be identified in a manner likely to bring his identity to the notice of a person seeing or hearing the broadcast,

(c) in the case of a sound recording that is communicated to the public, to be identified in a manner likely to bring his identity to the notice of a person hearing the communication,

(d) in the case of a sound recording that is issued to the public, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy,

or (in any of the above cases) to be identified in such other manner as may be agreed between the performer and the person mentioned in subsection (1).

(3) The right conferred by this section in relation to a performance given by a group (or so much of a performance as is given by a group) is not infringed--

(a) in a case falling within paragraph (a), (b) or (c) of subsection (2), or

(b) in a case falling within paragraph (d) of that subsection in which it is not reasonably practicable for each member of the group to be identified,

if the group itself is identified as specified in subsection (2).

(4) In this section "group" means two or more performers who have a particular name by which they may be identified collectively.

(5) If the assertion under section 205D specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.

(6) This section has effect subject to section 205E (exceptions to right).

205D Requirement that right be asserted

(1) A person does not infringe the right conferred by section 205C (right to be identified as performer) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.

(2) The right may be asserted generally, or in relation to any specified act or description of acts--

(a) by instrument in writing signed by or on behalf of the performer, or

(b) on an assignment of a performer's property rights, by including in the instrument effecting the assignment a statement that the performer asserts in relation to the performance his right to be identified.

(3) The persons bound by an assertion of the right under subsection (2) are--

(a) in the case of an assertion under subsection (2)(a), anyone to whose notice the assertion is brought;

(b) in the case of an assertion under subsection (2)(b), the assignee and anyone claiming through him, whether or not he has notice of the assertion.

(4) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

205E Exceptions to right

(1) The right conferred by section 205C (right to be identified as performer) is subject to the following exceptions.

(2) The right does not apply where it is not reasonably practicable to identify the performer (or, where identification of a group is permitted by virtue of section 205C(3), the group).

(3) The right does not apply in relation to any performance given for the purposes of reporting current events.

(4) The right does not apply in relation to any performance given for the purposes of advertising any goods or services.

(5) The right is not infringed by an act which by virtue of any of the following provisions of Schedule 2 would not infringe any of the rights conferred by Chapter 2--

(a) paragraph 2(1A) (news reporting);

(b) paragraph 3 (incidental inclusion of a performance or recording);

(c) paragraph 4(2) (things done for the purposes of examination);

(d) paragraph 8 (parliamentary and judicial proceedings);

(e) paragraph 9 (Royal Commissions and statutory inquiries).

Right to object to derogatory treatment

205F Right to object to derogatory treatment of performance

(1) The performer of a qualifying performance has a right which is infringed if--

(a) the performance is broadcast live, or

(b) by means of a sound recording the performance is played in public or communicated to the public,

with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

(2) This section has effect subject to section 205G (exceptions to right).

205G Exceptions to right

(1) The right conferred by section 205F (right to object to derogatory treatment of performance) is subject to the following exceptions.

(2) The right does not apply in relation to any performance given for the purposes of reporting current events.

(3) The right is not infringed by modifications made to a performance which are consistent with normal editorial or production practice.

(4) Subject to subsection (5), the right is not infringed by anything done for the purpose of--

(a) avoiding the commission of an offence,

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

(c) in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste or decency or which is likely to encourage or incite crime or lead to disorder or to be offensive to public feeling.

(5) Where--

(a) the performer is identified in a manner likely to bring his identity to the notice of a person seeing or hearing the performance as modified by the act in question; or

(b) he has previously been identified in or on copies of a sound recording issued to the public,

subsection (4) applies only if there is sufficient disclaimer.

(6) In subsection (5) "sufficient disclaimer", in relation to an act capable of infringing the right, means a clear and reasonably prominent indication--

(a) given in a manner likely to bring it to the notice of a person seeing or hearing the performance as modified by the act in question, and

(b) if the performer is identified at the time of the act, appearing along with the identification,

that the modifications were made without the performer's consent.

205H Infringement of right by possessing or dealing with infringing article

(1) The right conferred by section 205F (right to object to derogatory treatment of performance) is also infringed by a person who--

(a) possesses in the course of business, or

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

(c) distributes,

an article which is, and which he knows or has reason to believe is, an infringing article.

(2) An "infringing article" means a sound recording of a qualifying performance with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

Supplementary

205I Duration of rights

(1) A performer's rights under this Chapter in relation to a performance subsist so long as that performer's rights under Chapter 2 subsist in relation to the performance.

(2) In subsection (1) "performer's rights" includes rights of a performer that are vested in a successor of his.

205J Consent and waiver of rights

(1) It is not an infringement of the rights conferred by this Chapter to do any act to which consent has been given by or on behalf of the person entitled to the right.

(2) Any of those rights may be waived by instrument in writing signed by or on behalf of the person giving up the right.

(3) A waiver--

(a) may relate to a specific performance, to performances of a specified description or to performances generally, and may relate to existing or future performances, and

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

and if made in favour of the owner or prospective owner of a performer's property rights in the performance or performances to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

(4) Nothing in this Chapter shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to either of the rights conferred by this Chapter.

205K Application of provisions to parts of performances

(1) The right conferred by section 205C (right to be identified as performer) applies in relation to the whole or any substantial part of a performance.

(2) The right conferred by section 205F (right to object to derogatory treatment of performance) applies in relation to the whole or any part of a performance.

205L Moral rights not assignable

The rights conferred by this Chapter are not assignable.

205M Transmission of moral rights on death

(1) On the death of a person entitled to a right conferred by this Chapter--

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

(b) if there is no such direction but the performer's property rights in respect of the performance in question form part of his estate, the right passes to the person to whom the property rights pass,

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

(2) Where a performer's property rights pass in part to one person and in part to another, as for example where a bequest is limited so as to apply--

(a) to one or more, but not all, of the things to which the owner has the right to consent, or

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

any right which by virtue of subsection (1) passes with the performer's property rights is correspondingly divided.

(3) Where by virtue of subsection (1)(a) or (1)(b) a right becomes exercisable by more than one person--

(a) it is, in the case of the right conferred by section 205F (right to object to derogatory treatment of performance), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question, and

(b) any waiver of the right in accordance with section 205J by one of them 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 by virtue of subsection (1).

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

205N Remedies for infringement of moral rights

(1) An infringement of a right conferred by this Chapter is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) Where--

(a) there is an infringement of a right conferred by this Chapter,

(b) a person falsely claiming to act on behalf of a performer consented to the relevant conduct or purported to waive the right, and

(c) there would have been no infringement if he had been so acting,

that person shall be liable, jointly and severally with any person liable in respect of the infringement by virtue of subsection (1), as if he himself had infringed the right.

(3) Where proceedings for infringement of the right conferred on a performer by this Chapter, it shall be a defence to prove--

(a) that a person claiming to act on behalf of the performer consented to the defendant's conduct or purported to waive the right, and

(b) that the defendant reasonably believed that the person was acting on behalf of the performer.

(4) In proceedings for infringement of the right conferred by section 205F the court may, if it thinks it 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 performer from the broadcast or sound recording of the performance.

Chapter IV

Qualification for Protection, Extent and Interpretation

Qualification for protection and extent

206 Qualifying countries, individuals and persons

(1) In this Part--

"qualifying country" means--

(a) the United Kingdom,

(b) another member State of the European Economic Community, or

(c) to the extent that an Order under section 208 so provides, a country designated under that section as enjoying reciprocal protection;

"qualifying individual" means a citizen or subject of, or an individual resident in, a qualifying country; and

"qualifying person" means a qualifying individual or a body corporate or other body having legal personality which--

(a) is formed under the law of a part of the United Kingdom or another qualifying country, and

(b) has in any qualifying country a place of business at which substantial business activity is carried on.

(2) The reference in the definition of "qualifying individual" to a person's being a citizen or subject of a qualifying country shall be construed--

(a) in relation to the United Kingdom, as a reference to his being a British citizen, and

(b) in relation to a colony of the United Kingdom, as a reference to his being a British overseas territories' citizen by connection with that colony.

(3) In determining for the purpose of the definition of "qualifying person" whether substantial business activity is carried on at a place of business in any country, no account shall be taken of dealings in goods which are at all material times outside that country.

207 Countries to which this Part extends

This Part extends to England and Wales, Scotland and Northern Ireland.

208 Countries enjoying reciprocal protection

(1) Her Majesty may by Order in Council designate as enjoying reciprocal protection under this Part--

(a) a Convention country, or

(b) a country as to which Her Majesty is satisfied that provision has been or will be made under its law giving adequate protection for British performances.

(2) A "Convention country" means a country which is a party to a Convention relating to performers' rights to which the United Kingdom is also a party.

(3) A "British performance" means a performance--

(a) given by an individual who is a British citizen or resident in the United Kingdom, or

(b) taking place in the United Kingdom.

(4) If the law of that country provides adequate protection only for certain descriptions of performance, an Order under subsection (1)(b) designating that country shall contain provision limiting to a corresponding extent the protection afforded by this Part in relation to performances connected with that country.

(5) The power conferred by subsection (1)(b) is exercisable in relation to any of the Channel Islands, the Isle of Man or any colony of the United Kingdom, as in relation to a foreign country.

(6) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

209 Territorial waters and the continental shelf

(1) For the purposes of this Part the territorial waters of the United Kingdom shall be treated as part of the United Kingdom.

(2) This Part applies to things done in the United Kingdom sector of the continental shelf on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as it applies to things done in the United Kingdom.

(3) The United Kingdom sector of the continental shelf means the areas designated by order under section 1(7) of the Continental Shelf Act 1964.

210 British ships, aircraft and hovercraft

(1) This Part applies to things done on a British ship, aircraft or hovercraft as it applies to things done in the United Kingdom.

(2) In this section--

"British ship" means a ship which is a British ship for the purposes of the Merchant Shipping Act 1995 otherwise than by virtue of registration in a country outside the United Kingdom; and

"British aircraft" and "British hovercraft" mean an aircraft or hovercraft registered in the United Kingdom.

210A Requirement of signature: application in relation to body corporate

(1) The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal--

section 191B(3) (assignment of performer's property rights);

section 191C(1) (assignment of future performer's property rights);

section 191D(1) (grant of exclusive licence).

(2) The requirement in the following provisions that an instrument be signed by a person is also satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal--

section 205D(2)(a) (assertion of performer's moral rights);

section 205J(2) (waiver of performer's moral rights).

Interpretation

211 Expressions having same meaning as in copyright provisions

(1) The following expressions have the same meaning in this Part as in Part I (copyright)--

assignment (in Scotland),

broadcast,

business,

communication to the public,

country,

defendant (in Scotland),

delivery up (in Scotland),

the EEA,

EEA state,

film,

injunction (in Scotland),

literary work,

published,

signed,

sound recording, and

wireless broadcast.

(2) The provisions of--

(a) section 5B(2) and (3) (supplementary provisions relating to films), and

(b) section 6(3) to (5A) and section 19(4) (supplementary provisions relating to broadcasting),

apply for the purposes of this Part, and in relation to an infringement of the rights conferred by this Part, as they apply for the purposes of Part I and in relation to an infringement of copyright.

212 Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)--

accessible copy (in paragraphs 3A to 3E of Schedule 2)	paragraph 3E(4) of Schedule 2
assignment (in Scotland)	section 211(1) (and section 177)
broadcast (and related expressions)	section 211 (and section 6)
business	section 211(1) (and section 178)
communication to the public	section 211(1) (and section 20)
consent of performer (in relation to performer's property rights)	section 191A(2)
country	section 211(1) (and section 178)
defendant (in Scotland)	section 211(1) (and section 177)
delivery up (in Scotland)	section 211(1) (and section 177)
disabled person (in paragraphs 3A to	paragraph 3E(2) and (3) of

3E of Schedule 2)	Schedule 2
distribution right	section 182B(5)
the EEA and EEA state	section 211(1) (and section 172A)
exclusive recording contract	section 185(1)
film	section 211(1) (and section 5B)
group	section 205C(4)
illicit recording	section 197
injunction (in Scotland)	section 211(1) (and section 177)
issue to the public	section 182B
lending right	section 182C(7)
literary work	section 211(1) (and section 3(1))
making available right	section 182CA
performance	section 180(2)
performer's non-property rights	section 192A(1)
performer's property rights	section 191A(1)
published	section 211(1) (and section 175)
qualifying country	section 206(1)
qualifying individual	section 206(1) and (2)
qualifying performance	section 181
qualifying person	section 206(1) and (3)
recording (of a performance)	section 180(2)
recording rights (person having)	section 185(2) and (3)
rental right	section 182C(7)
reproduction right	section 182A(3)
rights owner (in relation to performer's property rights)	section 191A(3) and (4)

signed	section 211(1) (and section 176)
sound recording	section 211(1) (and section 5A)
wireless broadcast	section 211(1) (and section 178)

Part VII

Miscellaneous and General

Circumvention of protection measures

296 Circumvention of technical devices applied to computer programs

(1) This section applies where--

(a) a technical device has been applied to a computer program; and

(b) a person (A) knowing or having reason to believe that it will be used to make infringing copies--

(i) manufactures for sale or hire, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire or has in his possession for commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of the technical device; or

(ii) publishes information intended to enable or assist persons to remove or circumvent the technical device.

(2) The following persons have the same rights against A as a copyright owner has in respect of an infringement of copyright--

(a) a person--

(i) issuing to the public copies of, or

(ii) communicating to the public,

the computer program to which the technical device has been applied;

(b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a);

(c) the owner or exclusive licensee of any intellectual property right in the technical device applied to the computer program.

(3) The rights conferred by subsection (2) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(4) Further, the persons in subsection (2) have the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such means as is referred to in subsection (1) which a person has in his possession, custody or control with the intention that it should be used to facilitate the unauthorised removal or circumvention of any technical device which has been applied to a computer program, as a copyright owner has in relation to an infringing copy.

(5) The rights conferred by subsection (4) are concurrent, and section 102(5) shall apply, as respects anything done under section 99 or 100 by virtue of subsection (4), in relation to persons with concurrent rights as it applies, as respects anything done under section 99 or 100, in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) In this section references to a technical device in relation to a computer program are to any device intended to prevent or restrict acts that are not authorised by the copyright owner of that computer program and are restricted by copyright.

(7) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright)--

(a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and

(b) section 72 of the Senior Courts Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property);

and section 114 of this Act applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (4).

(8) Expressions used in this section which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part.

296ZA Circumvention of technological measures

(1) This section applies where--

(a) effective technological measures have been applied to a copyright work other than a computer program; and

(b) a person (B) does anything which circumvents those measures knowing, or with reasonable grounds to know, that he is pursuing that objective.

(2) This section does not apply where a person, for the purposes of research into cryptography, does anything which circumvents effective technological measures unless in so doing, or in issuing information derived from that research, he affects prejudicially the rights of the copyright owner.

(3) The following persons have the same rights against B as a copyright owner has in respect of an infringement of copyright--

(a) a person--

(i) issuing to the public copies of, or

(ii) communicating to the public,

the work to which effective technological measures have been applied; and

(b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a).

(4) The rights conferred by subsection (3) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(5) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright)--

(a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and

(b) section 72 of the Senior Courts Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property).

(6) Subsections (1) to (4) and (5)(b) and any other provision of this Act as it has effect for the purposes of those subsections apply, with any necessary adaptations, to rights in performances, publication right and database right.

(7) The provisions of regulation 22 (presumptions relevant to database right) of the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) apply in proceedings brought by virtue of this section in relation to database right.

296ZB Devices and services designed to circumvent technological measures

(1) A person commits an offence if he--

(a) manufactures for sale or hire, or

(b) imports otherwise than for his private and domestic use, or

(c) in the course of a business--

(i) sells or lets for hire, or

(ii) offers or exposes for sale or hire, or

(iii) advertises for sale or hire, or

(iv) possesses, or

(v) distributes, or

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

any device, product or component which is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures.

(2) A person commits an offence if he provides, promotes, advertises or markets--

(a) in the course of a business, or

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

a service the purpose of which is to enable or facilitate the circumvention of effective technological measures.

(3) Subsections (1) and (2) do not make unlawful anything done by, or on behalf of, law enforcement agencies or any of the intelligence services--

(a) in the interests of national security; or

(b) for the purpose of the prevention or detection of crime, the investigation of an offence, or the conduct of a prosecution,

and in this subsection "intelligence services" has the meaning given in section 81 of the Regulation of Investigatory Powers Act 2000.

(4) A person guilty of an offence under subsection (1) or (2) is liable--

(a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.

(5) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for believing, that--

(a) the device, product or component; or

(b) the service,

enabled or facilitated the circumvention of effective technological measures.

296ZC Devices and services designed to circumvent technological measures: search warrants and forfeiture

(1) The provisions of sections 297B (search warrants), 297C (forfeiture of unauthorised decoders: England and Wales or Northern Ireland) and 297D (forfeiture of unauthorised decoders: Scotland) apply to offences under section 296ZB with the following modifications.

(2) In section 297B the reference to an offence under section 297A(1) shall be construed as a reference to an offence under section 296ZB(1) or (2).

(3) In sections 297C(2)(a) and 297D(15) the references to an offence under section 297A(1) shall be construed as a reference to an offence under section 296ZB(1).

(4) In sections 297C and 297D references to unauthorised decoders shall be construed as references to devices, products or components for the purpose of circumventing effective technological measures.

296ZD Rights and remedies in respect of devices and services designed to circumvent technological measures

(1) This section applies where--

(a) effective technological measures have been applied to a copyright work other than a computer program; and

(b) a person (C) manufactures, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire, or has in his possession for commercial purposes any device, product or component, or provides services which--

(i) are promoted, advertised or marketed for the purpose of the circumvention of, or

(ii) have only a limited commercially significant purpose or use other than to circumvent, or

(iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,

those measures.

(2) The following persons have the same rights against C as a copyright owner has in respect of an infringement of copyright--

(a) a person--

(i) issuing to the public copies of, or

(ii) communicating to the public,

the work to which effective technological measures have been applied;

(b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a); and

(c) the owner or exclusive licensee of any intellectual property right in the effective technological measures applied to the work.

(3) The rights conferred by subsection (2) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(4) Further, the persons in subsection (2) have the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such device, product or component which a person has in his possession, custody or control with the intention that it should be used to circumvent effective technological measures, as a copyright owner has in relation to any infringing copy.

(5) The rights conferred by subsection (4) are concurrent, and section 102(5) shall apply, as respects anything done under section 99 or 100 by virtue of subsection (4), in relation to persons with concurrent rights as it applies, as respects anything done under

section 99 or 100, in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright)--

(a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and

(b) section 72 of the Senior Courts Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property);

and section 114 of this Act applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (4).

(7) In section 97(1) (innocent infringement of copyright) 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 subsisted in the work shall be construed as a reference to his not knowing or having reason to believe that his acts enabled or facilitated an infringement of copyright.

(8) Subsections (1) to (5), (6)(b) and (7) and any other provision of this Act as it has effect for the purposes of those subsections apply, with any necessary adaptations, to rights in performances, publication right and database right.

(9) The provisions of regulation 22 (presumptions relevant to database right) of the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) apply in proceedings brought by virtue of this section in relation to database right.

296ZE Remedy where effective technological measures prevent permitted acts

(1) In this section--

"permitted act" means an act which may be done in relation to copyright works, notwithstanding the subsistence of copyright, by virtue of a provision of this Act listed in Part 1 of Schedule 5A;

"voluntary measure or agreement" means--

(a) any measure taken voluntarily by a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program, or

(b) any agreement between a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program and another party,

the effect of which is to enable a person to carry out a permitted act.

(2) Where the application of any effective technological measure to a copyright work other than a computer program prevents a person from carrying out a permitted act in relation to that work then that person or a person being a representative of a class of persons prevented from carrying out a permitted act may issue a notice of complaint to the Secretary of State.

(3) Following receipt of a notice of complaint, the Secretary of State may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Secretary of State to be requisite or expedient for the purpose of--

(a) establishing whether any voluntary measure or agreement relevant to the copyright work the subject of the complaint subsists; or

(b) (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or exclusive licensee of that copyright work makes available to the complainant the means of carrying out the permitted act the subject of the complaint to the extent necessary to so benefit from that permitted act.

(4) The Secretary of State may also give directions--

(a) as to the form and manner in which a notice of complaint in subsection (2) may be delivered to him;

(b) as to the form and manner in which evidence of any voluntary measure or agreement may be delivered to him; and

(c) generally as to the procedure to be followed in relation to a complaint made under this section;

and shall publish directions given under this subsection in such manner as in his opinion will secure adequate publicity for them.

(5) It shall be the duty of any person to whom a direction is given under subsection (3)(a) or (b) to give effect to that direction.

(6) The obligation to comply with a direction given under subsection (3)(b) is a duty owed to the complainant or, where the complaint is made by a representative of a class of persons, to that representative and to each person in the class represented; and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

(7) Any direction under this section may be varied or revoked by a subsequent direction under this section.

(8) Any direction given under this section shall be in writing.

(9) This section does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(10) This section applies only where a complainant has lawful access to the protected copyright work, or where the complainant is a representative of a class of persons, where the class of persons have lawful access to the work.

(11) Subsections (1) to (10) apply with any necessary adaptations to--

(a) rights in performances, and in this context the expression "permitted act" refers to an act that may be done by virtue of a provision of this Act listed in Part 2 of Schedule 5A;

(b) database right, and in this context the expression "permitted act" refers to an act that may be done by virtue of a provision of this Act listed in Part 3 of Schedule 5A; and

(c) publication right.

296ZEA Remedy where restrictive measures prevent or restrict personal copying

(1) This section applies where an individual is prevented from making a personal copy of a copyright work, or is restricted in the number of personal copies of it which may be made, because of a restrictive measure applied by or on behalf of the copyright owner.

(2) That individual, or a person being a representative of a class of such individuals, may issue a notice of complaint to the Secretary of State.

(3) Following receipt of a notice of complaint, the Secretary of State may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Secretary of State to be requisite or expedient for the purpose of—

(a) establishing whether any voluntary measure or agreement relevant to the copyright work subsists, or

(b) (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or exclusive licensee of that copyright work makes available to the complainant or the class of individuals represented by the complainant the means of benefiting from section 28B to the extent necessary to benefit from that section.

(4) In deciding whether to give such directions, the Secretary of State must consider whether the restrictive measure unreasonably prevents or restricts the making of personal copies, in particular having regard to—

(a) the right of the copyright owner to adopt adequate measures limiting the number of personal copies which may be made, and

(b) whether other copies of the work are commercially available on reasonable terms by or with the authority of the copyright owner in a form which does not prevent or unreasonably restrict the making of personal copies.

(5) The Secretary of State may also give directions—

(a) as to the form and manner in which a notice of complaint in subsection (2) may be delivered,

(b) as to the form and manner in which evidence of any voluntary measure or agreement may be delivered, and

(c) generally as to the procedure to be followed in relation to a complaint made under this section,

and shall publish directions given under this subsection in such manner as the Secretary of State thinks will secure adequate publicity for them.

(6) Subsections (5) to (8) of section 296ZE—

(a) apply to directions under subsection (3)(a) or (b) as they apply to directions under section 296ZE(3)(a) or (b), and

(b) apply to directions under subsection (5) as they apply to directions under section 296ZE(4).

(7) This section does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(8) In this section—

“restrictive measure” means any technology, device or component designed, in the normal course of its operation, to protect the rights of copyright owners, which has the effect of preventing a copyright work from being copied (in whole or in part) or restricting the number of copies which may be made;

“personal copy” means a copy of a copyright work which may be made under section 28B;

“voluntary measure or agreement” has the same meaning as in section 296ZE, except that the reference to carrying out a permitted act is to be read as a reference to making a personal copy.

(9) Subsections (1) to (8) apply with any necessary adaptations to—

(a) rights in performances, and in this context “personal copy” refers to a copy of a recording of a performance which may be made under paragraph 1B of Schedule 2 without infringing the rights conferred by Chapter 2 of Part II (rights in performances), and

(b) publication right.

296ZF Interpretation of sections 296ZA to 296ZEA

(1) In sections 296ZA to 296ZE, "technological measures" are any technology, device or component which is designed, in the normal course of its operation, to protect a copyright work other than a computer program.

(2) Such measures are "effective" if the use of the work is controlled by the copyright owner through--

(a) an access control or protection process such as encryption, scrambling or other transformation of the work, or

(b) a copy control mechanism,

which achieves the intended protection.

(3) In this section, the reference to--

(a) protection of a work is to the prevention or restriction of acts that are not authorised by the copyright owner of that work and are restricted by copyright; and

(b) use of a work does not extend to any use of the work that is outside the scope of the acts restricted by copyright.

(4) Expressions used in sections 296ZA to 296ZEA which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part.

Rights management information

296ZG Electronic rights management information

(1) This section applies where a person (D), knowingly and without authority, removes or alters electronic rights management information which--

(a) is associated with a copy of a copyright work, or

(b) appears in connection with the communication to the public of a copyright work, and

where D knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.

(2) This section also applies where a person (E), knowingly and without authority, distributes, imports for distribution or communicates to the public copies of a copyright work from which electronic rights management information--

(a) associated with the copies, or

(b) appearing in connection with the communication to the public of the work,

has been removed or altered without authority and where E knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.

(3) A person issuing to the public copies of, or communicating, the work to the public, has the same rights against D and E as a copyright owner has in respect of an infringement of copyright.

(4) The copyright owner or his exclusive licensee, if he is not the person issuing to the public copies of, or communicating, the work to the public, also has the same rights against D and E as he has in respect of an infringement of copyright.

(5) The rights conferred by subsections (3) and (4) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons

with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright)--

(a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and

(b) section 72 of the Senior Courts Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property).

(7) In this section--

(a) expressions which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part; and

(b) "rights management information" means any information provided by the copyright owner or the holder of any right under copyright which identifies the work, the author, the copyright owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information.

(8) Subsections (1) to (5) and (6)(b), and any other provision of this Act as it has effect for the purposes of those subsections, apply, with any necessary adaptations, to rights in performances, publication right and database right.

(9) The provisions of regulation 22 (presumptions relevant to database right) of the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) apply in proceedings brought by virtue of this section in relation to database right.

Computer programs

296A Avoidance of certain terms

(1) Where a person has the use of a computer program under an agreement, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict--

(a) the making of any back up copy of the program which it is necessary for him to have for the purposes of the agreed use;

(b) where the conditions in section 50B(2) are met, the decompiling of the program; or

(c) the observing, studying or testing of the functioning of the program in accordance with section 50BA.

(2) In this section, decompile, in relation to a computer program, has the same meaning as in section 50B.

Databases

296B Avoidance of certain terms relating to databases

Where under an agreement a person has a right to use a database or part of a database, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict the performance of any act which would but for section 50D infringe the copyright in the database.

Fraudulent reception of transmissions

297 Offence of fraudulently receiving programmes

(1) A person who dishonestly receives a programme included in a broadcasting service provided from a place in the United Kingdom with intent to avoid payment of any charge applicable to the reception of the programme commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

In relation to a body corporate whose affairs are managed by its members "director" means a member of the body corporate.

297A Unauthorised decoders

(1) A person commits an offence if he--

(a) makes, imports, distributes, sells or lets for hire or offers or exposes for sale or hire any unauthorised decoder;

(b) has in his possession for commercial purposes any unauthorised decoder;

(c) instals, maintains or replaces for commercial purposes any unauthorised decoder; or

(d) advertises any unauthorised decoder for sale or hire or otherwise promotes any unauthorised decoder by means of commercial communications.

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

(a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding ten years, or to a fine, or to both.

(3) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for believing, that the decoder was an unauthorised decoder.

(4) In this section--

"apparatus" includes any device, component or electronic data (including software);

"conditional access technology" means any technical measure or arrangement whereby access to encrypted transmissions in an intelligible form is made conditional on prior individual authorisation;

"decoder" means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;

"encrypted" includes subjected to scrambling or the operation of cryptographic envelopes, electronic locks, passwords or any other analogous application;

"transmission" means--

(a) any programme included in a broadcasting service which is provided from a place in the United Kingdom or any other member State; or

(b) an information society service (within the meaning of Directive 98/34/EC of the European Parliament and of the Council of 22nd June 1998, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20th July 1998) which is provided from a place in the United Kingdom or any other member State; and

"unauthorised", in relation to a decoder, means that the decoder is designed or adapted to enable an encrypted transmission, or any service of which it forms part, to be accessed in an intelligible form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for accessing the transmission or service (whether by the circumvention of any conditional access technology related to the transmission or service or by any other means).

297B Search warrants

(1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing--

(a) that an offence under section 297A(1) has been or is about to be committed in any premises, and

(b) that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

(2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in section 9(2) of the Police and Criminal Evidence Act 1984 (c 60) (certain classes of personal or confidential material).

(3) A warrant under subsection (1)--

(a) may authorise persons to accompany any constable executing the warrant, and

(b) remains in force for *28 days* three months from the date of its issue.

(4) In executing a warrant issued under subsection (1) a constable may seize an article if he reasonably believes that it is evidence that any offence under section 297A(1) has been or is about to be committed.

(5) In this section "premises" includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

297C Forfeiture of unauthorised decoders: England and Wales or Northern Ireland

(1) In England and Wales or Northern Ireland where unauthorised decoders have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the unauthorised decoders.

(2) For the purposes of this section "relevant offence" means--

(a) an offence under section 297A(1) (criminal liability for making, importing, etc unauthorised decoders),

(b) an offence under the Trade Descriptions Act 1968,

(ba) an offence under the Business Protection from Misleading Marketing Regulations 2008,

(bb) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or

(c) an offence involving dishonesty or deception.

(3) An application under this section may be made--

(a) where proceedings have been brought in any court for a relevant offence relating to some or all of the unauthorised decoders, to that court, or

(b) where no application for the forfeiture of the unauthorised decoders has been made under paragraph (a), by way of complaint to a magistrates' court.

(4) On an application under this section, the court shall make an order for the forfeiture of any unauthorised decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorised decoders.

(5) A court may infer for the purposes of this section that such an offence has been committed in relation to any unauthorised decoders if it is satisfied that such an offence has been committed in relation to unauthorised decoders which are representative of the unauthorised decoders in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(6) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision--

(a) in England and Wales, to the Crown Court, or

(b) in Northern Ireland, to the county court.

(7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 (c 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (SI 1981/1675 (NI 26)) (statement of case)).

(8) Subject to subsection (9), where any unauthorised decoders are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.

(9) On making an order under this section the court may direct that the unauthorised decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under section 298 in relation to the unauthorised decoders in question, or dealt with in such other way as the court considers appropriate.

297D Forfeiture of unauthorised decoders: Scotland

(1) In Scotland the court may make an order under this section for the forfeiture of unauthorised decoders.

(2) An order under this section may be made--

(a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (c 46), or

(b) where a person is convicted of a relevant offence, in addition to any other penalty which the court may impose.

(3) On an application under subsection (2)(a), the court shall make an order for the forfeiture of any unauthorised decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorised decoders.

(4) The court may infer for the purposes of this section that such an offence has been committed in relation to any unauthorised decoders if it is satisfied that such an offence has been committed in relation to unauthorised decoders which are representative of the unauthorised decoders in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) The procurator-fiscal making the application under subsection (2)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the unauthorised decoders to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the unauthorised decoders should not be forfeited.

(6) Service under subsection (5) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995 (c 46).

(7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise to have an interest in, unauthorised decoders to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the unauthorised decoders should not be forfeited.

(8) The court shall not make an order following an application under subsection (2)(a)--

(a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved, or

(b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.

(9) Where an order for the forfeiture of any unauthorised decoders is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why the unauthorised decoders should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension.

(10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under subsection (9) as it applies to a stated case under Part 2 of that Act.

(11) An order following an application under subsection (2)(a) shall not take effect--

(a) until the end of the period of 21 days beginning with the day after the day on which the order is made, or

(b) if an appeal is made under subsection (9) above within that period, until the appeal is determined or abandoned.

(12) An order under subsection (2)(b) shall not take effect--

(a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995 (c 46), or

(b) if an appeal is made within that period, until the appeal is determined or abandoned.

(13) Subject to subsection (14), where any unauthorised decoders are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.

(14) On making an order under this section the court may direct that the unauthorised decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under section 298 in relation to the unauthorised decoders in question, or dealt with in such other way as the court considers appropriate.

(15) For the purposes of this section--

"relevant offence" means--

(a) an offence under section 297A(1) (criminal liability for making, importing, etc unauthorised decoders),

(b) an offence under the Trade Descriptions Act 1968,

(c) an offence under the Business Protection from Misleading Marketing Regulations 2008,

(d) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or

(e) any offence involving dishonesty or deception;

"the court" means--

(a) in relation to an order made on an application under subsection (2)(a), the sheriff, and

(b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.

298 Rights and remedies in respect of apparatus, &c for unauthorised reception of transmissions

(1) A person who--

(a) makes charges for the reception of programmes included in a broadcasting service provided from a place in the United Kingdom or any other member State,

(b) sends encrypted transmissions of any other description from a place in the United Kingdom or any other member State, or

(c) provides conditional access services from a place in the United Kingdom or any other member State,

is entitled to the following rights and remedies.

(2) He has the same rights and remedies against a person--

(a) who--

(i) makes, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire,

(ii) has in his possession for commercial purposes, or

(iii) installs, maintains or replaces for commercial purposes,

any apparatus designed or adapted to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so, or

(b) who publishes or otherwise promotes by means of commercial communications any information which is calculated to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so,

as a copyright owner has in respect of an infringement of copyright.

(3) Further, he has the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such apparatus as a copyright owner has in relation to an infringing copy.

(4) Section 72 of the Senior Courts Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property) apply to proceedings under this section as to proceedings under Part I of this Act (copyright).

(5) In section 97(1) (innocent infringement of copyright) 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 subsisted in the work shall be construed as a reference to his not knowing or having reason to believe that his acts infringed the rights conferred by this section.

(6) Section 114 applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (3) above.

(7) In this section "apparatus", "conditional access technology" and "encrypted" have the same meanings as in section 297A, "transmission" includes transmissions as defined in that section and "conditional access services" means services comprising the provision of conditional access technology.

299 Supplementary provisions as to fraudulent reception

(1) Her Majesty may by Order in Council--

(a) provide that section 297 applies in relation to programmes included in services provided from a country or territory outside the United Kingdom, and

(b) provide that section 298 applies in relation to such programmes and to encrypted transmissions sent from such a country or territory.

(3) A statutory instrument containing an Order in Council under subsection (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Where sections 297 and 298 apply in relation to a broadcasting service, they also apply to any service run for the person providing that service, or a person providing programmes for that service, which consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both.

(5) In sections 297, 297A and 298, and this section, "programme" and "broadcasting", and related expressions, have the same meaning as in Part I (copyright).

Provisions for the benefit of the Hospital for Sick Children

301 Provisions for the benefit of the Hospital for Sick Children

The provisions of Schedule 6 have effect for conferring on trustees for the benefit of the Hospital for Sick Children, Great Ormond Street, London, a right to a royalty in respect of the public performance, commercial publication or communication to the public of the play "Peter Pan" by Sir James Matthew Barrie, or of any adaptation of that work, notwithstanding that copyright in the work expired on 31st December 1987.

Financial assistance for certain international bodies

302 Financial assistance for certain international bodies

(1) The Secretary of State may give financial assistance, in the form of grants, loans or guarantees to--

(a) any international organisation having functions relating to trade marks or other intellectual property, or

(b) any EU institution or other body established under any of the EU Treaties having any such functions,

with a view to the establishment or maintenance by that organisation, institution or body of premises in the United Kingdom.

(2) Any expenditure of the Secretary of State under this section shall be defrayed out of money provided by Parliament; and any sums received by the Secretary of State in consequence of this section shall be paid into the Consolidated Fund.

General

303 Consequential amendments and repeals

(1) The enactments specified in Schedule 7 are amended in accordance with that Schedule, the amendments being consequential on the provisions of this Act.

(2) The enactments specified in Schedule 8 are repealed to the extent specified.

304 Extent

(1) Provision as to the extent of Part I (copyright), Part II (rights in performances) and Part III (design right) is to be found in sections 157, 207 and 255 respectively; the extent of the other provisions of this Act is as follows.

(2) Parts IV to VII extend to England and Wales, Scotland and Northern Ireland, except that--

(a) sections 287 to 292 (patents county courts) extend to England and Wales only,

(b) the proper law of the trust created by Schedule 6 (provisions for the benefit of the Hospital for Sick Children) is the law of England and Wales, and

(c) the amendments and repeals in Schedules 7 and 8 have the same extent as the enactments amended or repealed.

(3) The following provisions extend to the Isle of Man subject to any modifications contained in an Order made by Her Majesty in Council--

(a) sections 293 and 294 (patents: licences of right), and

(b) paragraphs 24 and 29 of Schedule 5 (patents: effect of filing international application for patent and power to extend time limits).

(4) Her Majesty may by Order in Council direct that the following provisions extend to the Isle of Man, with such exceptions and modifications as may be specified in the Order--

(a) Part IV (registered designs),

(b) Part V (patent agents),

(c) the provisions of Schedule 5 (patents: miscellaneous amendments) not mentioned in subsection (3) above,

(d) sections 297 to 299 (fraudulent reception of transmissions), and

(e) section 300 (fraudulent application or use of trade mark).

(5) Her Majesty may by Order in Council direct that sections 297 to 299 (fraudulent reception of transmissions) extend to any of the Channel Islands, with such exceptions and modifications as may be specified in the Order.

(6) Any power conferred by this Act to make provision by Order in Council for or in connection with the extent of provisions of this Act to a country outside the United Kingdom includes power to extend to that country, subject to any modifications specified in the Order, any provision of this Act which amends or repeals an enactment extending to that country.

305 Commencement

(1) The following provisions of this Act come into force on Royal Assent--

paragraphs 24 and 29 of Schedule 5 (patents: effect of filing international application for patent and power to extend time limits);

section 301 and Schedule 6 (provisions for the benefit of the Hospital for Sick Children).

(2) Sections 293 and 294 (licences of right) come into force at the end of the period of two months beginning with the passing of this Act.

(3) The other provisions of this Act come into force on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be appointed for different provisions and different purposes.

306 Short title

This Act may be cited as the Copyright, Designs and Patents Act 1988.

SCHEDULE A1

REGULATION OF LICENSING BODIES

Codes of practice

1

(1) The Secretary of State may by regulations make provision for a licensing body to be required to adopt a code of practice that complies with criteria specified in the regulations.

(2) The regulations may provide that, if a licensing body fails to adopt such a code of practice, any code of practice that is approved for the purposes of that licensing body by the Secretary of State, or by a person designated by the Secretary of State under the regulations, has effect as a code of practice adopted by the body.

(3) The regulations must provide that a code is not to be approved for the purposes of provision under sub-paragraph (2) unless it complies with criteria specified in the regulations.

2

Regulations under paragraph 1 may make provision as to conditions that are to be satisfied, and procedures that are to be followed--

(a) before a licensing body is required to adopt a code of practice as described in paragraph 1(1);

(b) before a code of practice has effect as one adopted by a licensing body as described in paragraph 1(2).

Licensing code ombudsman

3

(1) The Secretary of State may by regulations make provision--

(a) for the appointment of a person (the "licensing code ombudsman") to investigate and determine disputes about a licensing body's compliance with its code of practice;

(b) for the reference of disputes to the licensing code ombudsman;

(c) for the investigation and determination of a dispute so referred.

(2) Provision made under this paragraph may in particular include provision--

(a) about eligibility for appointment as the licensing code ombudsman;

(b) about the disputes to be referred to the licensing code ombudsman;

(c) requiring any person to provide information, documents or assistance to the licensing code ombudsman for the purposes of an investigation or determination;

(d) requiring a licensing body to comply with a determination of the licensing code ombudsman;

(e) about the payment of expenses and allowances to the licensing code ombudsman.

Code reviewer

4

(1) The Secretary of State may by regulations make provision--

(a) for the appointment by the Secretary of State of a person (the "code reviewer") to review and report to the Secretary of State on--

(i) the codes of practice adopted by licensing bodies, and

(ii) compliance with the codes of practice;

(b) for the carrying out of a review and the making of a report by that person.

(2) The regulations must provide for the Secretary of State, before appointing a person as the code reviewer, to consult persons whom the Secretary of State considers represent the interests of licensing bodies, licensees, members of licensing bodies, and the Intellectual Property Office.

(3) The regulations may, in particular, make provision--

(a) requiring any person to provide information, documents or assistance to the code reviewer for the purposes of a review or report;

(b) about the payment of expenses and allowances to the code reviewer.

(4) In this paragraph "member", in relation to a licensing body, means a person on whose behalf the body is authorised to negotiate or grant licences.

Sanctions

5

(1) The Secretary of State may by regulations provide for the consequences of a failure by a licensing body to comply with--

(a) a requirement to adopt a code of practice under provision within paragraph 1(1);

(b) a code of practice that has been adopted by the body in accordance with a requirement under provision within paragraph 1(1), or that has effect as one adopted by the body under provision within paragraph 1(2);

(c) a requirement imposed on the body under any other provision made under this Schedule;

(d) an authorisation under regulations under section 116A or 116B;

(e) a requirement imposed by regulations under section 116A or 116B;

(f) an authorisation under regulations under paragraph 1A or 1B of Schedule 2A;

(g) a requirement imposed by regulations under paragraph 1A or 1B of that Schedule.

(2) The regulations may in particular provide for--

(a) the imposition of financial penalties or other sanctions;

(b) the imposition of sanctions on a director, manager or similar officer of a licensing body or, where the body's affairs are managed by its members, on a member.

(3) The regulations must include provision--

(a) for determining whether there has been a failure to comply with a requirement or code of practice for the purposes of any provision made under sub-paragraph (1);

(b) for determining any sanction that may be imposed in respect of the failure to comply;

(c) for an appeal against a determination within paragraph (a) or (b).

(4) A financial penalty imposed under sub-paragraph (2) must not be greater than £50,000.

(5) The regulations may provide for a determination within sub-paragraph (3)(a) or (3)(b) to be made by the Secretary of State or by a person designated by the Secretary of State under the regulations.

(6) The regulations may make provision for requiring a person to give the person by whom a determination within sub-paragraph (3)(a) falls to be made (the "adjudicator") any information that the adjudicator reasonably requires for the purpose of making that determination.

Fees

6

(1) The Secretary of State may by regulations require a licensing body to which regulations under any other paragraph of this Schedule apply to pay fees to the Secretary of State.

(2) The aggregate amount of fees payable under the regulations must not be more than the cost to the Secretary of State of administering the operation of regulations under this Schedule.

General

7

(1) The power to make regulations under this Schedule includes in particular power--

(a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;

(b) to make provision for bodies of a particular description, or carrying out activities of a particular description, not to be treated as licensing bodies for the purposes of requirements imposed under regulations under this Schedule;

(c) to make provision that applies only in respect of licensing bodies of a particular description, or only in respect of activities of a particular description;

(d) otherwise to make different provision for different purposes.

(2) Regulations under a paragraph of this Schedule may amend Part 1 or Part 2, or any other enactment or subordinate legislation passed or made before the paragraph in question comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.

(3) The power to make regulations is exercisable by statutory instrument.

(4) A statutory instrument containing regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

8

References in this Schedule to a licensing body are to a body that is a licensing body for the purposes of Chapter 7 of Part 1 or Chapter 2 of Part 2, and references to licensees are to be construed accordingly.

SCHEDULE 1

COPYRIGHT: TRANSITIONAL PROVISIONS AND SAVINGS

Section 170

Introductory

1

(1) In this Schedule--

"the 1911 Act" means the Copyright Act 1911,

"the 1956 Act" means the Copyright Act 1956, and

"the new copyright provisions" means the provisions of this Act relating to copyright, that is, Part I (including this Schedule) and Schedules 3, 7 and 8 so far as they make amendments or repeals consequential on the provisions of Part I.

(2) References in this Schedule to "commencement", without more, are to the date on which the new copyright provisions come into force.

(3) References in this Schedule to "existing works" are to works made before commencement; and for this purpose a work of which the making extended over a period shall be taken to have been made when its making was completed.

2

(1) In relation to the 1956 Act, references in this Schedule to a work include any work or other subject-matter within the meaning of that Act.

(2) In relation to the 1911 Act--

(a) references in this Schedule to copyright include the right conferred by section 24 of that Act in substitution for a right subsisting immediately before the commencement of that Act;

(b) references in this Schedule to copyright in a sound recording are to the copyright under that Act in records embodying the recording; and

(c) references in this Schedule to copyright in a film are to any copyright under that Act in the film (so far as it constituted a dramatic work for the purposes of that Act) or in photographs forming part of the film.

General principles: continuity of the law

3

The new copyright provisions apply in relation to things existing at commencement as they apply in relation to things coming into existence after commencement, subject to any express provision to the contrary.

4

(1) The provisions of this paragraph have effect for securing the continuity of the law so far as the new copyright provisions re-enact (with or without modification) earlier provisions.

(2) A reference in an enactment, instrument or other document to copyright, or to a work or other subject-matter in which copyright subsists, which apart from this Act would be construed as referring to copyright under the 1956 Act 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 or to works in which copyright subsists under this Act.

(3) Anything done (including subordinate legislation made), or having effect as done, under or for the purposes of a provision repealed by this Act has effect as if done under or for the purposes of the corresponding provision of the new copyright provisions.

(4) References (expressed or implied) 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.

(5) A reference (express or implied) in an enactment, 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.

(6) The provisions of this paragraph have effect subject to any specific transitional provision or saving and to any express amendment made by this Act.

Subsistence of copyright

5

(1) Copyright subsists in an existing work after commencement only if copyright subsisted in it immediately before commencement.

(2) Sub-paragraph (1) does not prevent an existing work qualifying for copyright protection after commencement--

(a) under section 155 (qualification by virtue of first publication), or

(b) by virtue of an Order under section 159 (application of Part I to countries to which it does not extend).

6

(1) Copyright shall not subsist by virtue of this Act in an artistic work made before 1st June 1957 which at the time when the work was made constituted a design capable of registration under the Registered Designs Act 1949 or under the enactments repealed by that Act, and was used, or intended to be used, as a model or pattern to be multiplied by an industrial process.

(2) For this purpose a design shall be deemed to be used as a model or pattern to be multiplied by any industrial process--

(a) when the design is reproduced or is intended to be reproduced on more than 50 single articles, unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set of articles as defined in section 44(1) of the Registered Designs Act 1949, or

(b) when the design is to be applied to--

(i) printed paper hangings,

(ii) carpets, floor cloths or oil cloths, manufactured or sold in lengths or pieces,

(iii) textile piece goods, or textile goods manufactured or sold in lengths or pieces, or

(iv) lace, not made by hand.

7

(1) No copyright subsists in a film, as such, made before 1st June 1957.

(2) Where a film made before that date was an original dramatic work within the meaning of the 1911 Act, the new copyright provisions have effect in relation to the film as if it was an original dramatic work within the meaning of Part I.

(3) The new copyright provisions have effect in relation to photographs forming part of a film made before 1st June 1957 as they have effect in relation to photographs not forming part of a film.

8

(1) A film sound-track to which section 13(9) of the 1956 Act applied before commencement (film to be taken to include sounds in associated sound-track) shall be treated for the purposes of the new copyright provisions not as part of the film, but as a sound recording.

(2) However--

(a) copyright subsists in the sound recording only if copyright subsisted in the film immediately before commencement, and it continues to subsist until copyright in the film expires;

(b) the author and first owner of copyright in the film shall be treated as having been author and first owner of the copyright in the sound recording; and

(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 as in relation to the film.

9

No copyright subsists in--

(a) a wireless broadcast made before 1st June 1957, or

(b) a broadcast by cable made before 1st January 1985;

and any such broadcast shall be disregarded for the purposes of section 14(5) (duration of copyright in repeats).

Authorship of work

10

The question who was the author of an existing work shall be determined in accordance with the new copyright provisions for the purposes of the rights conferred by Chapter IV of Part I (moral rights), and for all other purposes shall be determined in accordance with the law in force at the time the work was made.

First ownership of copyright

11

(1) The question who was first owner of copyright in an existing work shall be determined in accordance with the law in force at the time the work was made.

(2) Where before commencement a person commissioned the making of a work in circumstances falling within--

(a) section 4(3) of the 1956 Act or paragraph (a) of the proviso to section 5(1) of the 1911 Act (photographs, portraits and engravings), or

(b) the proviso to section 12(4) of the 1956 Act (sound recordings),

those provisions apply to determine first ownership of copyright in any work made in pursuance of the commission after commencement.

Duration of copyright in existing works

12

(1) The following provisions have effect with respect to the duration of copyright in existing works.

The question which provision applies to a work shall be determined by reference to the facts immediately before commencement; and expressions used in this paragraph which were defined for the purposes of the 1956 Act have the same meaning as in that Act.

(2) Copyright in the following descriptions of work continues to subsist until the date on which it would have expired under the 1956 Act--

(a) literary, dramatic or musical works in relation to which the period of 50 years mentioned in the proviso to section 2(3) of the 1956 Act (duration of copyright in works made available to the public after the death of the author) has begun to run;

(b) engravings in relation to which the period of 50 years mentioned in the proviso to section 3(4) of the 1956 Act (duration of copyright in works published after the death of the author) has begun to run;

(c) published photographs and photographs taken before 1st June 1957;

(d) published sound recordings and sound recordings made before 1st June 1957;

(e) published films and films falling within section 13(3)(a) of the 1956 Act (films registered under former enactments relating to registration of films).

(3) Copyright in anonymous or pseudonymous literary, dramatic, musical or artistic works (other than photographs) continues to subsist--

(a) if the work is published, until the date on which it would have expired in accordance with the 1956 Act, and

(b) if the work is unpublished, 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 section 12(3) (duration of copyright in works of unknown authorship), the date on which copyright expires in accordance with that provision;

unless, in any case, the identity of the author becomes known before that date, in which case section 12(2) applies (general rule: life of the author plus 70 years).

(4) Copyright in the following descriptions of work continues to subsist 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--

(a) literary, dramatic and musical works of which the author has died and in relation to which none of the acts mentioned in paragraphs (a) to (e) of the proviso to section 2(3) of the 1956 Act has been done;

(b) unpublished engravings of which the author has died;

(c) unpublished photographs taken on or after 1st June 1957.

(5) Copyright in the following descriptions of work continues to subsist 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--

(a) unpublished sound recordings made on or after 1st June 1957;

(b) films not falling within sub-paragraph (2)(e) above,

unless the recording or film is published before the end of that period in which case copyright in it shall continue until the end of the period of 50 years from the end of the calendar year in which the recording or film is published.

(6) Copyright in any other description of existing work continues to subsist until the date on which copyright in that description of work expires in accordance with sections 12 to 15 of this Act.

(7) The above provisions do not apply to works subject to Crown or Parliamentary copyright (see paragraphs 41 to 43 below).

Perpetual copyright under the Copyright Act 1775

13

(1) The rights conferred on universities and colleges by the Copyright Act 1775 shall continue to subsist 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 and shall then expire.

(2) The provisions of the following Chapters of Part I--

Chapter III (acts permitted in relation to copyright works),

Chapter VI (remedies for infringement),

Chapter VII (provisions with respect to copyright licensing), and

Chapter VIII (the Copyright Tribunal),

apply in relation to those rights as they apply in relation to copyright under this Act.

Acts infringing copyright

14

(1) The provisions of Chapters II and III of Part I as to the acts constituting an infringement of copyright apply only in relation to acts done after commencement; the provisions of the 1956 Act continue to apply in relation to acts done before commencement.

(2) So much of section 18(2) as extends the restricted act of issuing copies to the public to include the rental to the public of copies of sound recordings, films or computer programs does not apply in relation to a copy of a sound recording, film or computer program acquired by any person before commencement for the purpose of renting it to the public.

(3) For the purposes of section 27 (meaning of "infringing copy") the question whether the making of an article constituted an infringement of copyright, or would have done if the article had been made in the United Kingdom, shall be determined--

(a) in relation to an article made on or after 1st June 1957 and before commencement, by reference to the 1956 Act, and

(b) in relation to an article made before 1st June 1957, by reference to the 1911 Act.

(4) For the purposes of the application of sections 31(2), 51(2) and 62(3) (subsequent exploitation of things whose making was, by virtue of an earlier provision of the section, not an infringement of copyright) to things made before commencement, it shall be assumed that the new copyright provisions were in force at all material times.

(5) Section 55 (articles for producing material in a particular typeface) applies where articles have been marketed as mentioned in subsection (1) before commencement with the substitution for the period mentioned in subsection (3) of the period of 25 years from the end of the calendar year in which the new copyright provisions come into force.

(6) Section 56 (transfer of copies, adaptations, &c of work in electronic form) does not apply in relation to a copy purchased before commencement.

(7) In section 65 (reconstruction of buildings) 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 1956 Act, the 1911 Act or any enactment repealed by the 1911 Act.

15

(1) Section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author) has effect in relation to existing works subject to the following provisions.

(2) Subsection (1)(b)(i) (assumption as to expiry of copyright) does not apply in relation to--

(a) photographs, or

(b) the rights mentioned in paragraph 13 above (rights conferred by the Copyright Act 1775).

16

The following provisions of section 7 of the 1956 Act continue to apply in relation to existing works--

(a) subsection (6) (copying of unpublished works from manuscript or copy in library, museum or other institution);

(b) subsection (7) (publication of work containing material to which subsection (6) applies), except paragraph (a) (duty to give notice of intended publication);

(c) subsection (8) (subsequent broadcasting, performance, &c of material published in accordance with subsection (7));

and subsection (9)(d) (illustrations) continues to apply for the purposes of those provisions.

17

Where in the case of a dramatic or musical work made before 1st July 1912, the right conferred by the 1911 Act did not include the sole right to perform the work in public, the acts restricted by the copyright shall be treated as not including--

(a) performing the work in public,

(b) communicating the work to the public, or

(c) doing any of the above in relation to an adaptation of the work;

and where the right conferred by the 1911 Act consisted only of the sole right to perform the work in public, the acts restricted by the copyright shall be treated as consisting only of those acts.

18

Where a work made before 1st July 1912 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, the copyright is subject to any right of publishing the essay, article, or portion in a separate form to which the author was entitled at the commencement of the 1911 Act, or would if that Act had not been passed, have become entitled under section 18 of the Copyright Act 1842.

Designs

19

(1) Section 51 (exclusion of copyright protection in relation to works recorded or embodied in design document or models) does not apply for ten years after commencement in relation to a design recorded or embodied in a design document or model before commencement.

(2) During those ten years the following provisions of Part III (design right) apply to any relevant copyright as in relation to design right--

(a) sections 237 to 239 (availability of licences of right), and

(b) sections 247 and 248 (application to comptroller to settle terms of licence of right).

(3) In section 237 as it applies by virtue of this paragraph, for the reference in subsection (1) to the last five years of the design right term there shall be substituted a reference to the last five years of the period of ten years referred to in sub-paragraph (1) above, or to so much of those last five years during which copyright subsists.

(4) In section 239 as it applies by virtue of this paragraph, for the reference in subsection (1)(b) to section 230 there shall be substituted a reference to section 99.

(5) Where a licence of right is available by virtue of this paragraph, a person to whom a licence was granted before commencement may apply to the comptroller for an order adjusting the terms of that licence.

(6) The provisions of sections 249 and 250 (appeals and rules) apply in relation to proceedings brought under or by virtue of this paragraph as to proceedings under Part III.

(7) A licence granted by virtue of this paragraph shall relate only to acts which would be permitted by section 51 if the design document or model had been made after commencement.

(8) Section 100 (right to seize infringing copies, &c) does not apply during the period of ten years referred to in sub-paragraph (1) in relation to anything to which it would not apply if the design in question had been first recorded or embodied in a design document or model after commencement.

(9) Nothing in this paragraph affects the operation of any rule of law preventing or restricting the enforcement of copyright in relation to a design.

20

(1) Where section 10 of the 1956 Act (effect of industrial application of design corresponding to artistic work) applied in relation to an artistic work at any time before commencement, section 52(2) of this Act applies with the substitution for the period of 25 years mentioned there of the relevant period of 15 years as defined in section 10(3) of the 1956 Act.

(2) Except as provided in sub-paragraph (1), section 52 applies only where articles are marketed as mentioned in subsection (1)(b) after commencement.

Abolition of statutory recording licence

21

Section 8 of the 1956 Act (statutory licence to copy records sold by retail) continues to apply where notice under subsection (1)(b) of that section was given before the repeal of that section by this Act, but only in respect of the making of records--

(a) within one year of the repeal coming into force, and

(b) up to the number stated in the notice as intended to be sold.

Moral rights

22

(1) No act done before commencement is actionable by virtue of any provision of Chapter IV of Part I (moral rights).

(2) Section 43 of the 1956 Act (false attribution of authorship) continues to apply in relation to acts done before commencement.

23

(1) The following provisions have effect with respect to the rights conferred by--

(a) section 77 (right to be identified as author or director), and

(b) section 80 (right to object to derogatory treatment of work).

(2) The rights do not apply--

(a) in relation to a literary, dramatic, musical and artistic work of which the author died before commencement; or

(b) in relation to a film made before commencement.

(3) The rights in relation to an existing literary, dramatic, musical or artistic work do not apply--

(a) where copyright first vested in the author, to anything which by virtue of an assignment of copyright made or licence granted before commencement may be done without infringing copyright;

(b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.

(4) The rights do not apply to anything done in relation to a record made in pursuance of section 8 of the 1956 Act (statutory recording licence).

24

The right conferred by section 85 (right to privacy of certain photographs and films) does not apply to photographs taken or films made before commencement.

Assignments and licences

25

(1) Any document made or event occurring before commencement which had any operation--

(a) affecting the ownership of the copyright in an existing work, or

(b) creating, transferring or terminating an interest, right or licence in respect of the copyright in an existing work,

has the corresponding operation in relation to copyright in the work under this Act.

(2) Expressions used in such a document shall be construed in accordance with their effect immediately before commencement.

26

(1) Section 91(1) of this Act (assignment of future copyright: statutory vesting of legal interest on copyright coming into existence) does not apply in relation to an agreement made before 1st June 1957.

(2) The repeal by this Act of section 37(2) of the 1956 Act (assignment of future copyright: devolution of right where assignee dies before copyright comes into existence) does not affect the operation of that provision in relation to an agreement made before commencement.

27

(1) Where the author of a literary, dramatic, musical or artistic work was the first owner of the copyright in it, no assignment of the copyright and no grant of any interest in it, made by him (otherwise than by will) after the passing of the 1911 Act and before 1st June 1957, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years from the death of the author.

(2) The reversionary interest in the copyright expectant on the termination of that period may after commencement be assigned by the author during his life but in the absence of any assignment shall, on his death, devolve on his legal personal representatives as part of his estate.

(3) Nothing in this paragraph affects--

(a) an assignment of the reversionary interest by a person to whom it has been assigned,

(b) an assignment of the reversionary interest after the death of the author by his personal representatives or any person becoming entitled to it, or

(c) any assignment of the copyright after the reversionary interest has fallen in.

(4) Nothing in this paragraph 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.

(5) In sub-paragraph (4) "collective work" means--

(a) any encyclopaedia, dictionary, yearbook, or similar work;

(b) a newspaper, review, magazine, or similar periodical; and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

28

(1) This paragraph applies where copyright subsists in a literary, dramatic, musical or artistic work made before 1st July 1912 in relation to which the author, before the commencement of the 1911 Act, made such an assignment or grant as was mentioned in paragraph (a) of the proviso to section 24(1) of that Act (assignment or grant of copyright or performing right for full term of the right under the previous law).

(2) If before commencement any event has occurred or notice has been given which by virtue of paragraph 38 of Schedule 7 to the 1956 Act had any operation in relation to copyright in the work under that Act, the event or notice has the corresponding operation in relation to copyright under this Act.

(3) Any right which immediately before commencement would by virtue of paragraph 38(3) of that Schedule have been exercisable in relation to the work, or copyright in it, is exercisable in relation to the work or copyright in it under this Act.

(4) If in accordance with paragraph 38(4) of that Schedule copyright would, on a date after the commencement of the 1956 Act, have reverted to the author or his personal representatives and that date falls after the commencement of the new copyright provisions--

(a) the copyright in the work shall revert to the author or his personal representatives, as the case may be, and

(b) any interest of any other person in the copyright which subsists on that date by virtue of any document made before the commencement of the 1911 Act shall thereupon determine.

29

Section 92(2) of this Act (rights of exclusive licensee against successors in title of person granting licence) does not apply in relation to an exclusive licence granted before commencement.

Bequests

30

(1) Section 93 of this Act (copyright to pass under will with original document or other material thing embodying unpublished work)--

(a) does not apply where the testator died before 1st June 1957, 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 1st June 1957, the ownership after his death of a manuscript of his, where such ownership has been acquired under a testamentary disposition made by him and the manuscript is of a work which has not

been published or performed in public, is prima facie proof of the copyright being with the owner of the manuscript.

Remedies for infringement

31

(1) Sections 96 and 97 of this Act (remedies for infringement) apply only in relation to an infringement of copyright committed after commencement; section 17 of the 1956 Act continues to apply in relation to infringements committed before commencement.

(2) Sections 99 and 100 of this Act (delivery up or seizure of infringing copies, &c) apply to infringing copies and other articles made before or after commencement; section 18 of the 1956 Act, and section 7 of the 1911 Act, (conversion damages, &c), do not apply after commencement except for the purposes of proceedings begun before commencement.

(3) Sections 101 to 102 of this Act (rights and remedies of exclusive licensee) apply where sections 96 to 100 of this Act apply; section 19 of the 1956 Act continues to apply where section 17 or 18 of that Act applies.

(4) Sections 104 to 106 of this Act (presumptions) apply only in proceedings brought by virtue of this Act; section 20 of the 1956 Act continues to apply in proceedings brought by virtue of that Act.

32

Sections 101 and 102 of this Act (rights and remedies of exclusive licensee) do not apply to a licence granted before 1st June 1957.

33

(1) The provisions of section 107 of this Act (criminal liability for making or dealing with infringing articles, &c) apply only in relation to acts done after commencement; section 21 of the 1956 Act (penalties and summary proceedings in respect of dealings which infringe copyright) continues to apply in relation to acts done before commencement.

(2) Section 109 of this Act (search warrants) applies in relation to offences committed before commencement in relation to which section 21A or 21B of the 1956 Act applied; sections 21A and 21B continue to apply in relation to warrants issued before commencement.

Copyright Tribunal: proceedings pending on commencement

34

(1) The Lord Chancellor may, after consultation with the Lord Advocate, by rules make such provision as he considers necessary or expedient with respect to proceedings pending under Part IV of the 1956 Act immediately before commencement.

(2) Rules under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Qualification for copyright protection

35

Every work in which copyright subsisted under the 1956 Act immediately before commencement shall be deemed to satisfy the requirements of Part I of this Act as to qualification for copyright protection.

Dependent territories

36

(1) The 1911 Act shall remain in force as part of the law of any dependent territory in which it was in force immediately before commencement until--

(a) the new copyright provisions come into force in that territory by virtue of an Order under section 157 of this Act (power to extend new copyright provisions), or

(b) in the case of any of the Channel Islands, the Act is repealed by Order under sub-paragraph (3) below.

(2) An Order in Council in force immediately before commencement which extends to any dependent territory any provisions of the 1956 Act shall remain in force as part of the law of that territory until--

(a) the new copyright provisions come into force in that territory by virtue of an Order under section 157 of this Act (power to extend new copyright provisions), or

(b) in the case of the Isle of Man, the Order is revoked by Order under sub-paragraph (3) below;

and while it remains in force such an Order may be varied under the provisions of the 1956 Act under which it was made.

(3) If it appears to Her Majesty that provision with respect to copyright has been made in the law of any of the Channel Islands or the Isle of Man otherwise than by extending the provisions of Part I of this Act, Her Majesty may by Order in Council repeal the 1911 Act as it has effect as part of the law of that territory or, as the case may be, revoke the Order extending the 1956 Act there.

(4) A dependent territory in which the 1911 or 1956 Act remains in force shall be treated, in the law of the countries to which Part I extends, as a country to which that Part extends; and those countries shall be treated in the law of such a territory as countries to which the 1911 Act or, as the case may be, the 1956 Act extends.

(5) If a country in which the 1911 or 1956 Act is in force ceases to be a colony of the United Kingdom, section 158 of this Act (consequences of country ceasing to be colony) applies with the substitution for the reference in subsection (3)(b) to the provisions of Part I of this Act of a reference to the provisions of the 1911 or 1956 Act, as the case may be.

(6) In this paragraph "dependent territory" means any of the Channel Islands, the Isle of Man or any colony.

37

(1) This paragraph applies to a country which immediately before commencement was not a dependent territory within the meaning of paragraph 36 above but--

(a) was a country to which the 1956 Act extended, or

(b) was treated as such a country by virtue of paragraph 39(2) of Schedule 7 to that Act (countries to which the 1911 Act extended or was treated as extending);

and Her Majesty may by Order in Council conclusively declare for the purposes of this paragraph whether a country was such a country or was so treated.

(2) A country to which this paragraph applies shall be treated as a country to which Part I extends for the purposes of sections 154 to 156 (qualification for copyright protection) until--

(a) an Order in Council is made in respect of that country under section 159 (application of Part I to countries to which it does not extend), or

(b) an Order in Council is made declaring that it shall cease to be so treated by reason of the fact that the provisions of the 1956 Act or, as the case may be, the 1911 Act, which extended there as part of the law of that country have been repealed or amended.

(3) A statutory instrument containing an Order in Council under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Territorial waters and the continental shelf

38

Section 161 of this Act (application of Part I to things done in territorial waters or the United Kingdom sector of the continental shelf) does not apply in relation to anything done before commencement.

British ships, aircraft and hovercraft

39

Section 162 (British ships, aircraft and hovercraft) does not apply in relation to anything done before commencement.

Crown copyright

40

(1) Section 163 of this Act (general provisions as to Crown copyright) applies to an existing work if--

(a) section 39 of the 1956 Act applied to the work immediately before commencement, and

(b) the work is not one to which section 164, 165 or 166 applies (copyright in Acts, Measures and Bills and Parliamentary copyright: see paragraphs 42 and 43 below).

(2) Section 163(1)(b) (first ownership of copyright) has effect subject to any agreement entered into before commencement under section 39(6) of the 1956 Act.

41

(1) The following provisions have effect with respect to the duration of copyright in existing works to which section 163 (Crown copyright) applies.

The question which provision applies to a work shall be determined by reference to the facts immediately before commencement; and expressions used in this paragraph which were defined for the purposes of the 1956 Act have the same meaning as in that Act.

(2) Copyright in the following descriptions of work continues to subsist until the date on which it would have expired in accordance with the 1956 Act--

(a) published literary, dramatic or musical works;

(b) artistic works other than engravings or photographs;

(c) published engravings;

(d) published photographs and photographs taken before 1st June 1957;

(e) published sound recordings and sound recordings made before 1st June 1957;

(f) published films and films falling within section 13(3)(a) of the 1956 Act (films registered under former enactments relating to registration of films).

(3) Copyright in unpublished literary, dramatic or musical works continues to subsist until--

(a) the date on which copyright expires in accordance with section 163(3), or

(b) the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force,

whichever is the later.

(4) Copyright in the following descriptions of work continues to subsist 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--

(a) unpublished engravings;

(b) unpublished photographs taken on or after 1st June 1957.

(5) Copyright in a film or sound recording not falling within sub-paragraph (2) above continues to subsist 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, unless the film or recording is published before the end of that period, in which case copyright expires 50 years from the end of the calendar year in which it is published.

42

(1) Section 164 (copyright in Acts and Measures) applies to existing Acts of Parliament and Measures of the General Synod of the Church of England.

(2) References in that section to Measures of the General Synod of the Church of England include Church Assembly Measures.

Parliamentary copyright

43

(1) Section 165 of this Act (general provisions as to Parliamentary copyright) applies to existing unpublished literary, dramatic, musical or artistic works, but does not otherwise apply to existing works.

(2) Section 166 (copyright in Parliamentary Bills) does not apply--

(a) to a public Bill which was introduced into Parliament and published before commencement,

(b) to a private Bill of which a copy was deposited in either House before commencement, or

(c) to a personal Bill which was given a First Reading in the House of Lords before commencement.

Copyright vesting in certain international organisations

44

(1) Any work in which immediately before commencement copyright subsisted by virtue of section 33 of the 1956 Act shall be deemed to satisfy the requirements of

section 168(1); but otherwise section 168 does not apply to works made or, as the case may be, published before commencement.

(2) Copyright in any such work which is unpublished continues to subsist until the date on which it would have expired in accordance with the 1956 Act, or the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, whichever is the earlier.

Meaning of "publication"

45

Section 175(3) (construction of building treated as equivalent to publication) applies only where the construction of the building began after commencement.

Meaning of "unauthorised"

46

For the purposes of the application of the definition in section 178 (minor definitions) of the expression "unauthorised" in relation to things done before commencement--

(a) paragraph (a) applies in relation to things done before 1st June 1957 as if the reference to the licence of the copyright owner were a reference to his consent or acquiescence;

(b) paragraph (b) applies with the substitution for the words from "or, in a case" to the end of the words "or any person lawfully claiming under him"; and

(c) paragraph (c) shall be disregarded.

SCHEDULE 2

RIGHTS IN PERFORMANCES: PERMITTED ACTS

Section 189

Introductory

1

(1) The provisions of this Schedule specify acts which may be done in relation to a performance or recording notwithstanding the rights conferred by this Chapter; they relate only to the question of infringement of those rights and do not affect any other right or obligation restricting the doing of any of the specified acts.

(2) No inference shall be drawn from the description of any act which may by virtue of this Schedule be done without infringing the rights conferred by this Chapter as to the scope of those rights.

(3) The provisions of this Schedule are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

Making of temporary copies

1A

The rights conferred by this Chapter are not infringed by the making of a temporary copy of a recording of a performance which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable--

(a) a transmission of the recording in a network between third parties by an intermediary; or

(b) a lawful use of the recording;

and which has no independent economic significance.

Personal copies of recordings for private use

1B

(1) The making of a copy of a recording of a performance by an individual does not infringe the rights conferred by this Chapter provided that the copy—

(a) is a copy of—

(i) the individual's own copy of the recording, or

(ii) a personal copy of the recording made by the individual,

(b) is made for the individual's private use, and

(c) is made for ends which are neither directly nor indirectly commercial.

(2) In this paragraph "the individual's own copy" is a copy of a recording which—

(a) has been lawfully acquired by the individual on a permanent basis,

(b) is not an illicit recording, and

(c) has not been made under any provision of this Schedule which permits the making of a copy without infringing the rights conferred by this Chapter.

(3) In this paragraph a "personal copy" means a copy made under this paragraph.

(4) The rights conferred by this Chapter in a recording are infringed if an individual transfers a personal copy of the recording to another person (otherwise than on a private and temporary basis), except where the transfer is authorised by the rights owner.

(5) If the rights conferred by this Chapter are infringed as set out in sub-paragraph (4), a personal copy which has been transferred is for all purposes subsequently treated as an illicit recording.

(6) The rights conferred by this Chapter in a recording are also infringed if an individual, having made a personal copy of the recording, transfers the individual's own copy of the recording to another person (otherwise than on a private and temporary basis) and, after that transfer and without the consent of the rights owner, retains any personal copy.

(7) If the rights conferred by this Chapter are infringed as set out in sub-paragraph (6), any retained personal copy is for all purposes subsequently treated as an illicit recording.

(8) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

(9) Expressions used but not defined in this paragraph have the same meaning as in section 28B.

Research and private study

1C

(1) Fair dealing with a performance or a recording of a performance for the purposes of research for a non-commercial purpose does not infringe the rights conferred by this Chapter.

(2) Fair dealing with a performance or recording of a performance for the purposes of private study does not infringe the rights conferred by this Chapter.

(3) Copying of a recording by a person other than the researcher or student is not fair dealing if—

(a) in the case of a librarian, or a person acting on behalf of a librarian, that person does anything which is not permitted under paragraph 6F (copying by librarians: single copies of published recordings), or

(b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

(4) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

(5) Expressions used in this paragraph have the same meaning as in section 29.

Copies for text and data analysis for non-commercial research

1D

(1) The making of a copy of a recording of a performance by a person who has lawful access to the recording does not infringe any rights conferred by this Chapter provided that the copy is made in order that a person who has lawful access to the recording may carry out a computational analysis of anything recorded in the recording for the sole purpose of research for a non-commercial purpose.

(2) Where a copy of a recording has been made under this paragraph, the rights conferred by this Chapter are infringed if—

(a) the copy is transferred to any other person, except where the transfer is authorised by the rights owner, or

(b) the copy is used for any purpose other than that mentioned in sub-paragraph (1), except where the use is authorised by the rights owner.

(3) If a copy of a recording made under this paragraph is subsequently dealt with—

(a) it is to be treated as an illicit recording for the purposes of that dealing, and

(b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

(4) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

(5) Expressions used in this paragraph have the same meaning as in section 29A.

Criticism, reviews, quotation and news reporting

2

(1) Fair dealing with a performance or recording for the purpose of criticism or review, of that or another performance or recording, or of a work, does not infringe any of the rights conferred by this Chapter provided that the performance or recording has been made available to the public.

(1ZA) The rights conferred by this Chapter in a performance or a recording of a performance are not infringed by the use of a quotation from the performance or recording (whether for criticism or review or otherwise) provided that—

(a) the performance or recording has been made available to the public,

(b) the use of the quotation is fair dealing with the performance or recording, and

(c) the extent of the quotation is no more than is required by the specific purpose for which it is used.

(1A) Fair dealing with a performance or recording for the purpose of reporting current events does not infringe any of the rights conferred by this Chapter.

(1B) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of sub-paragraph (1ZA), would not infringe any right conferred by this Chapter, that term is unenforceable.

(2) Expressions used in this paragraph have the same meaning as in section 30.

Caricature, parody or pastiche

2A

(1) Fair dealing with a performance or a recording of a performance for the purposes of caricature, parody or pastiche does not infringe the rights conferred by this Chapter in the performance or recording.

(2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

(3) Expressions used in this paragraph have the same meaning as in section 30A.

Incidental inclusion of performance or recording

3

(1) The rights conferred by this Chapter are not infringed by the incidental inclusion of a performance or recording in a sound recording, film or broadcast.

(2) Nor are those rights infringed by anything done in relation to copies of, or the playing, showing or communication to the public of, anything whose making was, by virtue of sub-paragraph (1), not an infringement of those rights.

(3) A performance or recording so far as it consists of music, or words spoken or sung with music, shall not be regarded as incidentally included in a sound recording or broadcast if it is deliberately included.

(4) Expressions used in this paragraph have the same meaning as in section 31.

Disabled persons: copies of recordings for personal use

3A.

(1) This paragraph applies if—

(a) a disabled person has lawful possession or lawful use of a copy of the whole or part of a recording of a performance, and

(b) the person's disability prevents the person from enjoying the recording to the same degree as a person who does not have that disability.

(2) The making of an accessible copy of the copy of the recording referred to in sub-paragraph (1)(a) does not infringe the rights conferred by this Chapter if—

(a) the copy is made by the disabled person or by a person acting on behalf of the disabled person,

(b) the copy is made for the disabled person's personal use, and

(c) the same kind of accessible copies of the recording are not commercially available on reasonable terms by or with the authority of the rights owner.

(3) If a person makes an accessible copy under this paragraph on behalf of a disabled person and charges the disabled person for it, the sum charged must not exceed the cost of making and supplying the copy.

(4) The rights conferred by this Chapter are infringed by the transfer of an accessible copy of a recording made under this paragraph to any person other than—

(a) a person by or for whom an accessible copy of the recording may be made under this paragraph, or

(b) a person who intends to transfer the copy to a person falling within paragraph (a),

except where the transfer is authorised by the rights owner.

(5) An accessible copy of a recording made under this paragraph is to be treated for all purposes as an illicit recording if it is held by a person at a time when the person does not fall within sub-paragraph (4)(a) or (b).

(6) If an accessible copy of a recording made under this paragraph is subsequently dealt with —

(a) it is to be treated as an illicit recording for the purposes of that dealing, and

(b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

Making and supply of accessible copies by authorised bodies

3B

(1) If an authorised body has lawful possession of or lawful access to a copy of the whole or part of a recording of a performance (including a recording of a performance included in a broadcast), the body may, without infringing the rights conferred by this Chapter, make and supply accessible copies of the recording for the personal use of disabled persons.

(2) If an authorised body has lawful access to the whole or part of a broadcast, the body may, without infringing the rights conferred by this Chapter, make a recording of the broadcast, and make and supply accessible copies of the recording, for the personal use of disabled persons.

(3) But sub-paragraphs (1) and (2) do not apply if the same kind of accessible copies of the recording, or of the broadcast, are commercially available on reasonable terms by or with the consent of the rights owner.

(4) For the purposes of sub-paragraphs (1) and (2), supply “for the personal use of disabled persons” includes supply to a person acting on behalf of a disabled person.

(5) An authorised body which is an educational establishment conducted for profit must ensure that any accessible copies which it makes under this paragraph are used only for its educational purposes.

(6) An accessible copy made under this paragraph must be accompanied by a statement that it is made under this paragraph, unless it is accompanied by an equivalent statement in accordance with section 31B(7),

(7) If an accessible copy is made under this paragraph of a recording which is in copy-protected electronic form, the accessible copy must, so far as is reasonably practicable, incorporate the same or equally effective copy protection (unless the rights owner agrees otherwise).

(8) An authorised body which has made an accessible copy of a recording under this paragraph may supply it to another authorised body which is entitled to make accessible copies of the recording under this paragraph for the purposes of enabling that other body to make accessible copies of the recording.

(9) If an authorised body supplies an accessible copy it has made under this paragraph to a person or authorised body as permitted by this paragraph and charges the person or body for it, the sum charged must not exceed the cost of making and supplying the copy.

(10) If an accessible copy of a recording made under this paragraph is subsequently dealt with —

(a) it is to be treated as an illicit recording for the purposes of that dealing, and

(b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

Making and supply of intermediate copies by authorised bodies

3C

(1) An authorised body which is entitled to make an accessible copy of a recording of a performance under paragraph 3B may, without infringing the rights conferred by this Chapter, make a copy of the recording ("an intermediate copy") if this is necessary in order to make the accessible copy.

(2) An authorised body which has made an intermediate copy of a recording under this paragraph may supply it to another authorised body which is entitled to make accessible copies of the recording under paragraph 3B for the purposes of enabling that other body to make accessible copies of the recording.

(3) The rights conferred by this Chapter are infringed by the transfer of an intermediate copy made under this paragraph to a person other than another authorised body as permitted by sub-paragraph (2), except where the transfer is authorised by the rights owner.

(4) If an authorised body supplies an intermediate copy to an authorised body under sub-paragraph (2) and charges the body for it, the sum charged must not exceed the cost of making and supplying the copy.

Accessible and intermediate copies: records

3D

(1) An authorised body must keep a record of—

(a) accessible copies it makes under paragraph 3B,

(b) intermediate copies it makes under paragraph 3C, and

(c) the persons to whom such copies are supplied.

(2) An authorised body must allow the rights owner or a person acting for the rights owner, on giving reasonable notice, to inspect the records at any reasonable time.

Paragraphs 3A to 3D: interpretation and general

3E

(1) This paragraph supplements paragraphs 3A to 3D and includes definitions.

(2) “Disabled person” means a person who has a physical or mental impairment which prevents the person from enjoying a recording of a performance to the same degree as a person who does not have that impairment, and “disability” is to be construed accordingly.

(3) But a person is not to be regarded as disabled by reason only of an impairment of visual function which can be improved, by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light.

(4) An “accessible copy” of a recording of a performance means a version of the recording which enables the fuller enjoyment of the recording by disabled persons.

(5) An accessible copy—

(a) may include facilities for navigating around the version of the recording, but

(b) must not include any changes to the recording which are not necessary to overcome the problems suffered by the disabled persons for whom the accessible copy is intended.

(6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of paragraph 3A, 3B or 3C, would not infringe any right conferred by this Chapter, that term is unenforceable.

(7) “Authorised body” and “supply” have the meaning given in section 31F, and other expressions used in paragraphs 3A to 3D but not defined in this paragraph have the same meaning as in sections 31A to 31BB.

Illustration for instruction

4

(1) Fair dealing with a performance or a recording of a performance for the sole purpose of illustration for instruction does not infringe the rights conferred by this Chapter provided that the dealing is—

(a) for a non-commercial purpose, and

(b) by a person giving or receiving instruction (or preparing for giving or receiving instruction).

(2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

(3) Expressions used in this paragraph have the same meaning as in section 32.

Playing or showing sound recording, film or broadcast at educational establishment

5

(1) The playing or showing of a sound recording, film or broadcast at an educational establishment for the purposes of instruction before an audience consisting of teachers and pupils at the establishment and other persons directly connected with the activities of the establishment is not a playing or showing of a performance in public for the purposes of infringement of the rights conferred by this Chapter.

(2) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.

(3) Expressions used in this paragraph have the same meaning as in section 34 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

Recording by educational establishments of broadcasts

6

(1) A recording of a broadcast, 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 Chapter in relation to any performance or recording included in it, provided that the educational purposes are non-commercial.

(2) The rights conferred by this Chapter are not infringed where a recording of a broadcast or a copy of such a recording, made under sub-paragraph (1), is communicated by or on behalf of the educational establishment to its pupils or staff for the non-commercial educational purposes of that establishment.

(3) Sub-paragraph (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.

(4) Acts which would otherwise be permitted by this paragraph are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.

(5) If a recording made under this paragraph is subsequently dealt with—

(a) it is to be treated as an illicit recording for the purposes of that dealing, and

(b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

(6) In this paragraph "dealt with" means—

(a) sold or let for hire,

(b) offered or exposed for sale or hire, or

(c) communicated otherwise than as permitted by sub-paragraph (2).

(7) Expressions used in this paragraph (other than "dealt with") have the same meaning as in section 35 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

Copying and use of extracts of recordings by educational establishments

6ZA

(1) The copying of extracts of a recording of a performance by or on behalf of an educational establishment does not infringe any of the rights conferred by this Chapter in the recording provided that the copy is made for the purposes of instruction for a non-commercial purpose.

(2) The rights conferred by this Chapter are not infringed where an extract of a recording of a performance, made under sub-paragraph (1), is communicated by or on behalf of the educational establishment to its pupils or staff for the purposes of instruction for a non-commercial purpose.

(3) Sub-paragraph (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.

(4) Not more than 5% of a recording may be copied under this paragraph by or on behalf of an educational establishment in any period of 12 months.

(5) Acts which would otherwise be permitted by this paragraph are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.

(6) The terms of a licence granted to an educational establishment authorising acts permitted by this paragraph are of no effect so far as they purport to restrict the proportion of a recording which may be copied (whether on payment or free of charge) to less than that which would be permitted by this paragraph.

(7) If a recording made under this paragraph is subsequently dealt with—

(a) it is to be treated as an illicit recording for the purposes of that dealing, and

(b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

(8) In this paragraph "dealt with" means—

(a) sold or let for hire,

(b) offered or exposed for sale or hire, or

(c) communicated otherwise than as permitted by sub-paragraph (2)

(9) Expressions used in this paragraph (other than “dealt with”) have the same meaning as in section 36 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

Lending of copies by educational establishments

6A

(1) The rights conferred by this Chapter are not infringed by the lending of copies of a recording of a performance by an educational establishment.

(2) Expressions used in this paragraph have the same meaning as in section 36A; and any provision with respect to the application of that section made under section 174(2) (instruction given elsewhere than an educational establishment) applies also for the purposes of this paragraph.

Lending of copies by libraries or archives

6B

(A1) The rights conferred by this Chapter are not infringed by the following acts by a public library in relation to a book within the public lending right scheme--

(a) lending the book;

(b) in relation to an audio-book or e-book, copying or issuing a copy of the book as an act incidental to lending it.

(A2) Expressions used in sub-paragraph (A1) have the same meaning as in section 40A(1).

(1) The rights conferred by this Chapter are not infringed by the lending of copies of a recording of a performance by a library or archive (other than a public library) which is not conducted for profit.

Libraries and educational establishments etc: making recordings of performances available through dedicated terminals

6C

(1) The rights conferred by this Chapter in a recording of a performance are not infringed by an institution specified in sub-paragraph (2) communicating the recording to the public or making it available to the public by means of a dedicated terminal on its premises, if the conditions in sub-paragraph(3) are met.

(2) The institutions are—

(a) a library,

(b) an archive,

(c) a museum, and

(d) an educational establishment.

(3) The conditions are that the recording or a copy of the recording—

(a) has been lawfully acquired by the institution,

(b) is communicated or made available to individual members of the public for the purposes of research or private study, and

(c) is communicated or made available in compliance with any purchase or licensing terms to which the recording is subject.

Copying by librarians: supply of single copies to other libraries

6D

(1) A librarian may, if the conditions in sub-paragraph (2) are met, make a single copy of the whole or part of a published recording of a performance and supply it to another library, without infringing any rights conferred by this Chapter in the recording.

(2) The conditions are—

(a) the copy is supplied in response to a request from a library which is not conducted for profit, and

(b) at the time of making the copy the librarian does not know, or could not reasonably find out, the name and address of a person entitled to authorise the making of a copy of the recording.

(3) Where a library makes a charge for supplying a copy under this paragraph, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(4) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

Copying by librarians etc: replacement copies of recordings

6E

(1) A librarian, archivist or curator of a library, archive or museum may, without infringing any rights conferred by this Chapter, make a copy of a recording of a performance in that institution's permanent collection—

(a) in order to preserve or replace that recording in that collection, or

(b) where a recording in the permanent collection of another library, archive or museum has been lost, destroyed or damaged, in order to replace the recording in the collection of that other library, archive or museum,

provided that the conditions in sub-paragraphs (2) and (3) are met.

(2) The first condition is that the recording is—

(a) included in the part of the collection kept wholly or mainly for the purposes of reference on the institution's premises,

(b) included in a part of the collection not accessible to the public, or

(c) available on loan only to other libraries, archives or museums.

(3) The second condition is that it is not reasonably practicable to purchase a copy of the recording to achieve either of the purposes mentioned in sub-paragraph (1).

(4) The reference in sub-paragraph (1)(b) to a library, archive or museum is to a library, archive or museum which is not conducted for profit.

(5) Where an institution makes a charge for supplying a copy to another library, archive or museum under sub-paragraph (1)(b), the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

Copying by librarians: single copies of published recordings

6F

(1) A librarian of a library which is not conducted for profit may, if the conditions in sub-paragraph (2) are met, make and supply a single copy of a reasonable proportion of a published recording without infringing any of the rights in the recording conferred by this Chapter.

(2) The conditions are—

(a) the copy is supplied in response to a request from a person who has provided the librarian with a declaration in writing which includes the information set out in sub-paragraph (3), and

(b) the librarian is not aware that the declaration is false in a material particular.

(3) The information which must be included in the declaration is—

(a) the name of the person who requires the copy and the material which that person requires,

(b) a statement that the person has not previously been supplied with a copy of that material by any library,

(c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person, and

(d) a statement that to the best of the person's knowledge, no other person with whom the person works or studies has made, or intends to make, at or about the same time as the person's request, a request for substantially the same material for substantially the same purpose.

(4) Where a library makes a charge for supplying a copy under this paragraph, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) Where a person ("P") makes a declaration under this paragraph that is false in a material particular and is supplied with a copy of a recording which would have been an illicit recording if made by P—

(a) P is liable for infringement of the rights conferred by this Chapter as if P had made the copy, and

(b) the copy supplied to P is to be treated as an illicit recording for all purposes.

(6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

Copying by librarians or archivists: single copies of unpublished recordings

6G

(1) A librarian or archivist may make and supply a single copy of the whole or part of a recording without infringing any of the rights conferred by this Chapter in the recording, provided that—

(a) the copy is supplied in response to a request from a person who has provided the librarian or archivist with a declaration in writing which includes the information set out in sub-paragraph (2), and

(b) the librarian or archivist is not aware that the declaration is false in a material particular.

(2) The information which must be included in the declaration is—

(a) the name of the person who requires the copy and the material which that person requires,

(b) a statement that the person has not previously been supplied with a copy of that material by any library or archive, and

(c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person.

(3) But the rights conferred by this Chapter are infringed if—

(a) the recording had been published or communicated to the public before the date it was deposited in the library or archive, or

(b) the rights owner has prohibited the copying of the recording,

and at the time of making the copy the librarian or archivist is, or ought to be, aware of that fact.

(4) Where a library or archive makes a charge for supplying a copy under this paragraph, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) Where a person ("P") makes a declaration under this paragraph that is false in a material particular and is supplied with a copy of a recording which would have been an illicit recording if made by P—

(a) P is liable for infringement of the rights conferred by this Chapter as if P had made the copy, and

(b) the copy supplied to P is to be treated as an illicit recording for all purposes.

Paragraphs 6B to 6G: interpretation

6H

Expressions used in paragraphs 6B to 6G have the same meaning as in sections 40A to 43.

Copy of work required to be made as condition of export

7

(1) If an article of cultural or historical importance or interest cannot lawfully be exported from the United Kingdom unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of any right conferred by this Chapter to make that copy.

(2) Expressions used in this paragraph have the same meaning as in section 44.

Parliamentary and judicial proceedings

8

(1) The rights conferred by this Chapter are not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting such proceedings.

(2) Expressions used in this paragraph have the same meaning as in section 45.

Royal Commissions and statutory inquiries

9

(1) The rights conferred by this Chapter are not infringed by anything done for the purposes of the proceedings of a Royal Commission or statutory inquiry or for the purpose of reporting any such proceedings held in public.

(2) Expressions used in this paragraph have the same meaning as in section 46.

Public records

10

(1) Material which is comprised in public records within the meaning of the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act (Northern Ireland) 1923, or in Welsh public records (as defined in the Government of Wales Act 2006), which are open to public inspection in pursuance of that Act, may be copied, and a copy may be supplied to any person, by or with the authority of any officer appointed under that Act, without infringing any right conferred by this Chapter.

(2) Expressions used in this paragraph have the same meaning as in section 49.

Acts done under statutory authority

11

(1) Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe the rights conferred by this Chapter.

(2) Sub-paragraph (1) applies in relation to an enactment contained in Northern Ireland legislation as it applies to an Act of Parliament.

(3) Nothing in this paragraph shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.

(4) Expressions used in this paragraph have the same meaning as in section 50.

Transfer of copies of works in electronic form

12

(1) This paragraph applies where a recording of a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to make further recordings in connection with his use of the recording.

(2) If there are no express terms--

(a) prohibiting the transfer of the recording by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any consent or terminating any consent on a transfer, or

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

anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by this Chapter, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.

(3) The same applies where the original purchased recording is no longer usable and what is transferred is a further copy used in its place.

(4) The above provisions also apply on a subsequent transfer, with the substitution for references in sub-paragraph (2) to the purchaser of references to the subsequent transferor.

(5) This paragraph does not apply in relation to a recording purchased before the commencement of this Chapter.

(6) Expressions used in this paragraph have the same meaning as in section 56.

Use of recordings of spoken works in certain cases

13

(1) Where a recording of the reading or recitation of a literary work is made for the purpose--

(a) of reporting current events, or

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

it is not an infringement of the rights conferred by this Chapter to use the recording (or to copy the recording and use the copy) for that purpose, provided the following conditions are met.

(2) The conditions 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;

(b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;

(c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and

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

(3) Expressions used in this paragraph have the same meaning as in section 58.

Recordings of folksongs

14

(1) A recording of a performance of a song may be made for the purpose of including it in an archive maintained by a body not established or conducted for profit without infringing any of the rights conferred by this Chapter, provided the conditions in sub-paragraph (2) below are met.

(2) The conditions are that--

(a) the words are unpublished and of unknown authorship at the time the recording is made,

(b) the making of the recording does not infringe any copyright, and

(c) its making is not prohibited by any performer.

(3) A single copy of a recording made in reliance on sub-paragraph (1) and included in an archive referred to in that sub-paragraph may be made and supplied by the archivist without infringing any right conferred by this Chapter, provided that—

(a) the copy is supplied in response to a request from a person who has provided the archivist with a declaration in writing which includes the information set out in sub-paragraph (4), and

(b) the archivist is not aware that the declaration is false in a material particular.

(4) The information which must be included in the declaration is—

(a) the name of the person who requires the copy and the recording which is the subject of the request,

(b) a statement that the person has not previously been supplied with a copy of that recording by any archivist, and

(c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person.

(5) Where an archive makes a charge for supplying a copy under this paragraph, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(6) Where a person (“P”) makes a declaration under this paragraph that is false in a material particular and is supplied with a copy of a recording which would have been an illicit recording if made by P—

(a) P is liable for infringement of the rights conferred by this Chapter as if P had made the copy, and

(b) the copy supplied to P is to be treated as an illicit recording for all purposes.

(7) In this paragraph references to an archivist include a person acting on behalf of an archivist.

(8) Expressions used in this paragraph have the same meaning as in section 61.

Lending of certain recordings

14A

(1) The Secretary of State may by order provide that in such cases as may be specified in the order the lending to the public of copies of films or sound recordings shall be treated as licensed by the performer subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) No such order shall apply if, or to the extent that, there is a licensing scheme certified for the purposes of this paragraph under paragraph 16 of Schedule 2A providing for the grant of licences.

(3) An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies lent, the lender or the circumstances of the lending.

(4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(5) Nothing in this section affects any liability under section 184(1)(b) (secondary infringement: possessing or dealing with illicit recording) in respect of the lending of illicit recordings.

(6) Expressions used in this paragraph have the same meaning as in section 66.

Incidental recording for purposes of broadcast

16

(1) A person who proposes to broadcast a recording of a performance in circumstances not infringing the rights conferred by this Chapter shall be treated as having consent for the purposes of this Chapter for the making of a further recording for the purposes of the broadcast.

(2) That consent is subject to the condition that the further recording--

(a) shall not be used for any other purpose, and

(b) shall be destroyed within 28 days of being first used for broadcasting the performance.

(3) A recording made in accordance with this paragraph shall be treated as an illicit recording--

(a) for the purposes of any use in breach of the condition mentioned in sub-paragraph (2)(a), and

(b) for all purposes after that condition or the condition mentioned in sub-paragraph (2)(b) is broken.

(4) Expressions used in this paragraph have the same meaning as in section 68.

Recordings for purposes of supervision and control of broadcasts and other services

17

(1) The rights conferred by this Chapter are not infringed by the making or use by the British Broadcasting Corporation, for the purpose of maintaining supervision and control over programmes broadcast by them or included in any on-demand programme service provided by them, of recordings of those programmes.

(2) The rights conferred by this Chapter are not infringed by anything done in pursuance of--

(a) section 167(1) of the Broadcasting Act 1990, section 115(4) or (6) or 117 of the Broadcasting Act 1996 or paragraph 20 of Schedule 12 to the Communications Act 2003;

(b) a condition which, by virtue of section 334(1) of the Communications Act 2003, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996;

(c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of OFCOM to require production of recordings etc);

(d) section 334(3), 368O(1) or (3) of the Communications Act 2003.

(3) The rights conferred by this Chapter are not infringed by the use by OFCOM in connection with the performance of any of their functions under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003 of--

(a) any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or

(b) any existing material which is transferred to them by a scheme made under section 30 of the Communications Act 2003.

(4) In subsection (3), "existing material" means--

(a) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996; and

(b) any recording or transcript which was provided to the Broadcasting Standards Commission under section 115(4) or (6) or 116(5) of the Broadcasting Act 1996.

(5) The rights conferred by this Chapter are not infringed by the use by the appropriate regulatory authority designated under section 368B of the Communications Act 2003, in connection with the performance of any of their functions under that Act, of any recording, script or transcript which is provided to them under or by virtue of any provision of that Act.

(6) In this paragraph "on-demand programme service" has the same meaning as in the Communications Act 2003 (see section 368A of that Act).

Recording for the purposes of time-shifting

17A

(1) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any right conferred by this Chapter in relation to a performance or recording included in the broadcast.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with--

(a) it shall be treated as an illicit recording for the purposes of that dealing; and

(b) if that dealing infringes any right conferred by this Chapter, it shall be treated as an illicit recording for all subsequent purposes.

(3) In sub-paragraph (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

(4) Expressions used in this paragraph have the same meaning as in section 70.

Photographs of broadcasts

17B

(1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any right conferred by this Chapter in relation to a performance or recording included in the broadcast.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with--

(a) it shall be treated as an illicit recording for the purposes of that dealing; and

(b) if that dealing infringes any right conferred by this Chapter, it shall be treated as an illicit recording for all subsequent purposes.

(3) In sub-paragraph (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

(4) Expressions used in this paragraph have the same meaning as in section 71.

Free public showing or playing of broadcast

18

(1) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any right conferred by this Chapter in relation to a performance or recording included in--

(a) the broadcast, or

(b) any sound recording (except so far as it is an excepted sound recording) or film which is played or shown in public by reception of the broadcast.

(1A) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any right conferred by this Chapter in relation to a performance or recording included in any excepted sound recording which is played in public by reception of the broadcast, if the playing or showing of that broadcast in public--

(b) is necessary for the purposes of--

(i) repairing equipment for the reception of broadcasts;

(ii) demonstrating that a repair to such equipment has been carried out; or

(iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.

(2) 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 it forms part)--

(i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast, or

(ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.

(3) The following shall not be regarded as having paid for admission to a place--

(a) persons admitted as residents or inmates of the place;

(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 seeing or hearing broadcasts is only incidental to the main purposes of the club or society.

(4) Where the making of the broadcast was an infringement of the rights conferred by this Chapter in relation to a performance or recording, the fact that it was heard or seen in public by the reception of the broadcast shall be taken into account in assessing the damages for that infringement.

(5) Expressions used in this paragraph have the same meaning as in section 72.

Reception and re-transmission of wireless broadcast by cable

19

(1) This paragraph applies where a wireless broadcast made from a place in the United Kingdom is received and immediately re-transmitted by cable.

(2) The rights conferred by this Chapter 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 it is re-transmitted by cable; but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted by cable shall be taken into account in assessing the damages for that infringement.

(3) Where--

(a) the re-transmission by cable is in pursuance of a relevant requirement, but

(b) to any extent, the area in which the re-transmission by cable takes place ("the cable area") falls outside the area for reception in which the broadcast is made ("the broadcast area"),

the re-transmission by cable (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any performance or recording included in the broadcast shall, subject to sub-paragraph (4), be treated as licensed by the owner of the rights conferred by this Chapter in relation to the performance or recording, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the re-transmission by cable of the broadcast as may be agreed or determined in default of agreement by the Copyright Tribunal.

(4) Sub-paragraph (3) does not apply if, or to the extent that, the re-transmission of the performance or recording by cable is (apart from that sub-paragraph) licensed by the owner of the rights conferred by this Chapter in relation to the performance or recording.

(5) The Secretary of State may by order--

(a) provide that in specified cases sub-paragraph (2) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that sub-paragraph, or

(b) exclude the application of that sub-paragraph in relation to broadcasts of a specified description made as mentioned in that sub-paragraph.

(6) Where the Secretary of State exercises the power conferred by sub-paragraph (5)(b) in relation to broadcasts of any description, the order may also provide for sub-paragraph (3) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.

(7) An order under this paragraph may contain such transitional provision as appears to the Secretary of State to be appropriate.

(8) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) Expressions used in this paragraph have the same meaning as in section 73.

19A

(1) An application to settle the royalty or other sum payable in pursuance of sub-paragraph (3) of paragraph 19 may be made to the Copyright Tribunal by the owner of the rights conferred by this Chapter or the person making the broadcast.

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

(3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under sub-paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that sub-paragraph.

(5) An order under sub-paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

Recording of broadcast for archival purposes

21

(1) A recording of a broadcast or a copy of such a recording may be made for the purpose of being placed in an archive maintained by a body which is not established or conducted for profit without infringing any right conferred by this Chapter in relation to a performance or recording included in the broadcast.

(2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

(3) Expressions used in this paragraph have the same meaning as in section 75.

SCHEDULE 2A

LICENSING OF PERFORMER'S RIGHTS

Section 205A

Licensing schemes and licensing bodies

1

(1) In this Chapter a "licensing scheme" means a scheme setting out--

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

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

and for this purpose a "scheme" includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) In this Chapter a "licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner of a performer's property rights or as agent for him, of performers' property right licences, and whose objects include the granting of licences covering the performances of more than one performer.

(3) In this paragraph "performers' property right licences" means licences to do, or authorise the doing of, any of the things for which consent is required under section 182A, 182B, 182C or 182CA.

(4) References in this Chapter to licences or licensing schemes covering the performances of more than one performer do not include licences or schemes covering only--

(a) performances recorded in a single recording,

(b) performances recorded in more than one recording where--

(i) the performers giving the performances are the same, or

(ii) the recordings are made by, or by employees of or commissioned by, a single individual, firm, company or group of companies.

For purpose a group of companies means a holding company and its subsidiaries within the meaning of section 1159 of the Companies Act 2006.

(5) Schedule A1 confers powers to provide for the regulation of licensing bodies.

Power to provide for licensing of orphan rights

1A

(1) The Secretary of State may by regulations provide for the grant of licences to do, or authorise the doing of, acts to which section 182, 182A, 182B, 182C, 182CA, 183 or 184 applies in respect of a performance, where--

(a) the performer's consent would otherwise be required under that section, but

(b) the right to authorise or prohibit the act qualifies as an orphan right under the regulations.

(2) The regulations may--

(a) specify a person or a description of persons authorised to grant licences, or

(b) provide for a person designated in the regulations to specify a person or a description of persons authorised to grant licences.

(3) The regulations must provide that, for a right to qualify as an orphan right, it is a requirement that the owner of the right has not been found after a diligent search made in accordance with the regulations.

(4) The regulations must provide for any licence--

(a) to have effect as if granted by the missing owner;

(b) not to give exclusive rights;

(c) not to be granted to a person authorised to grant licences.

(5) The regulations may apply in a case where it is not known whether a performer's right subsists, and references to a right, to a missing owner and to an interest of a missing owner are to be read as including references to a supposed right, owner or interest.

Extended collective licensing

1B

(1) The Secretary of State may by regulations provide for a licensing body that applies to the Secretary of State under the regulations to be authorised to grant licences to do, or authorise the doing of, acts to which section 182, 182A, 182B, 182C, 182CA, 183 or 184 applies in respect of a performance, where the right to authorise or prohibit the act is not owned by the body or a person on whose behalf the body acts.

(2) An authorisation must specify the acts to which any of those sections applies that the licensing body is authorised to license.

(3) The regulations must provide for the rights owner to have a right to limit or exclude the grant of licences by virtue of the regulations.

(4) The regulations must provide for any licence not to give exclusive rights.

General provision about licensing

1C

(1) This paragraph and paragraph 1D apply to regulations under paragraphs 1A and 1B.

(2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.

(3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.

(4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including--

(a) the deduction of administrative costs;

(b) the period for which sums must be held;

(c) the treatment of sums after that period (as bona vacantia or otherwise).

(5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.

(6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision--

(a) for determining the rights and obligations of any person if a right ceases to qualify as an orphan right (or ceases to qualify by reference to any rights owner), or if a rights owner exercises the right referred to in paragraph 1B(3), while a licence is in force;

(b) about maintenance of registers and access to them;

(c) permitting the use of a work for incidental purposes including an application or search;

(d) for a right conferred by section 205C to be treated as having been asserted under section 205D;

(e) for the payment of fees to cover administrative expenses.

1D

(1) The power to make regulations includes power--

(a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;

(b) to make transitional, transitory or saving provision;

(c) to make different provision for different purposes.

(2) Regulations under any provision may amend this Part, or any other enactment or subordinate legislation passed or made before that provision comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.

(3) Regulations may make provision by reference to guidance issued from time to time by any person.

(4) The power to make regulations is exercisable by statutory instrument.

(5) A statutory instrument containing regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

References and applications with respect to licensing schemes

2

Paragraphs 3 to 8 (references and applications with respect to licensing schemes) apply to licensing schemes operated by licensing bodies in relation to a performer's property rights which cover the performances of more than one performer, so far as they relate to licences for--

(a) copying a recording of the whole or any substantial part of a qualifying performance,

(aa) making such a recording available to the public in the way mentioned in section 182CA(1), or

(b) renting or lending copies of a recording to the public;

and in those paragraphs "licensing scheme" means a licensing scheme of any of those descriptions.

Reference of proposed licensing scheme to tribunal

3

(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) 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.

Reference of licensing scheme to tribunal

4

(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 requires a licence in a case of a description to which the scheme applies, or

(b) an organisation claiming to be representative of such persons,

that person or organisation may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Tribunal under this paragraph 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.

Further reference of scheme to tribunal

5

(1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under paragraph 3 or 4, or under this paragraph, made an order with respect to the scheme, then, while the order remains in force--

(a) the operator of the scheme,

(b) a person claiming that he 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 refer the scheme again to the Tribunal so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases--

(a) within twelve 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, until the last three months before the expiry of the order.

(3) A scheme which has been referred to the Tribunal under this paragraph 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.

Application for grant of licence in connection with licensing scheme

6

(1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal.

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

(a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted, or

(b) proposes terms for a licence which are unreasonable,

may apply to the Copyright Tribunal.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of sub-paragraph (2) if--

(a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or

(b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Application for review of order as to entitlement to licence

7

(1) Where the Copyright Tribunal has made an order under paragraph 6 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.

(2) An application shall not be made, except with the special leave of the Tribunal--

(a) within twelve months from the date of the order, or of the decision on a previous application under this paragraph, 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 paragraph is due to expire within 15 months of that decision, until the last three months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

Effect of order of tribunal as to licensing scheme

8

(1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal--

(a) under paragraph 3 (reference of terms of proposed scheme), or

(b) under paragraph 4 or 5 (reference of existing scheme to Tribunal),

shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

(2) While the order is in force a person who in a case of a class to which the order applies--

(a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and

(b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question in 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 it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

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 sub-paragraph (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

No such direction may be made where sub-paragraph (4) below applies.

(4) An order of the Tribunal under paragraph 4 or 5 made with respect to a scheme which is certified for any purpose under paragraph 16 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal.

(5) Where the Tribunal has made an order under paragraph 6 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall if he--

(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 performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order.

References and applications with respect to licensing by licensing bodies

9

Paragraphs 10 to 13 (references and applications with respect to licensing by licensing bodies) apply to licences relating to a performer's property rights which cover the performance of more than one performer granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorise--

(a) copying a recording of the whole or any substantial part of a qualifying performance,

(aa) making such a recording available to the public in the way mentioned in section 182CA(1), or

(b) renting or lending copies of a recording to the public;

and references in those paragraphs to a licence shall be construed accordingly.

Reference to tribunal of proposed licence

10

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

Reference to tribunal of expiring licence

11

(1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such an application may not be made until the last three months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.

(4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.

(5) An order of the Tribunal under this paragraph may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Application for review of order as to licence

12

(1) Where the Copyright Tribunal has made an order under paragraph 10 or 11, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.

(2) An application shall not be made, except with the special leave of the Tribunal--

(a) within twelve months from the date of the order or of the decision on a previous application under this paragraph, 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 paragraph is due to expire within 15 months of that decision, until the last three months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

Effect of order of tribunal as to licence

13

(1) Where the Copyright Tribunal has made an order under paragraph 10 or 11 and the order remains in force, the person entitled to the benefit of the order shall if he--

(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 performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner 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 under paragraph 10, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) in the case of an order under paragraph 11, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order under paragraph 10 or 11, or an order under paragraph 12 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it 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.

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 sub-paragraph (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

General considerations: unreasonable discrimination

14

(1) In determining what is reasonable on a reference or application under this Schedule relating to a licensing scheme or licence, the Copyright 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 secure 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.

(2) This does not affect the Tribunal's general obligation in any case to have regard to all relevant circumstances.

Application to settle royalty or other sum payable for lending

15

(1) An application to settle the royalty or other sum payable in pursuance of paragraph 14A of Schedule 2 (lending of certain recordings) may be made to the Copyright Tribunal by the owner of a performer's property rights or the person claiming to be treated as licensed by him.

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

(3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under sub-paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that sub-paragraph.

(5) An order under sub-paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal

Certification of licensing schemes

16

(1) A person operating or proposing to operate a licensing scheme may apply to the Secretary of State to certify the scheme for the purposes of paragraph 14A of Schedule 2 (lending of certain recordings).

(2) The Secretary of State shall by order made by statutory instrument certify the scheme if he is satisfied that it--

(a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences, and

(b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.

(3) The scheme shall be scheduled to the order and the certification shall come into operation for the purposes of the relevant paragraph of Schedule 2--

(a) on such date, not less than eight weeks after the order is made, as may be specified in the order, or

(b) if the scheme is the subject of a reference under paragraph 3 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that paragraph comes into force or the reference is withdrawn.

(4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Secretary of State shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under paragraph 3,4 or 5, and may do so in any other case if he thinks fit.

(5) The order shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Secretary of State that it is no longer being operated according to its terms.

Powers exercisable in consequence of competition report

17

(1) Sub-paragraph (1A) applies where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Competition Commission or (as the case may be) the Office of Fair Trading under section 12(5) of the Competition Act 1980 or section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations etc) consists of or includes--

(a) conditions in licences granted by the owner of a performer's property rights restricting the use to which a recording may be put by the licensee or the right of the owner to grant other licenses, or

(b) a refusal of an owner of a performer's property rights to grant licences on reasonable terms.

(1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the performer's property rights shall be available as of right.

(2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and 164(1) of, and paragraphs 5, 10 and 11 of Schedule 7 to, the Act of 2002 shall be construed accordingly.

(3) The Secretary of State, the Competition Commission or (as the case may be) the Office of Fair Trading shall only exercise the powers available by virtue of this paragraph if he or it is satisfied that to do so does not contravene any Convention relating to performers' rights to which the United Kingdom is a party.

(4) The terms of a licence available by virtue of this paragraph shall, in default of agreement, be settled by the Copyright Tribunal on an application by the person requiring the licence; and terms so settled shall authorise the licensee to do everything in respect of which a licence is so available.

(5) Where the terms of a licence are settled by the Tribunal, the licence has effect from the date on which the application to the Tribunal was made.

SCHEDULE 5A

PERMITTED ACTS TO WHICH SECTION 296ZE APPLIES

Section 296ZE

Part 1

Copyright Exceptions

section 29 (research and private study)
section 29A (copies for text and data analysis for non-commercial research)
section 31A (disabled persons: copies of works for personal use)
section 31B (making and supply of accessible copies by authorised bodies)
section 31BA (making and supply of intermediate copies by authorised bodies)
section 32 (illustration for instruction)
section 35 (recording by educational establishments of broadcasts)
section 36 (copying and use of extracts of works by educational establishments)
section 41(copying by librarians: supply of single copies to other libraries)
section 42 (copying by librarians etc: replacement copies of works)
section 42A (copying by librarians: single copies of published works)
section 43 (copying by librarians or archivists: single copies of unpublished works)
section 44 (copy of work required to be made as condition of export)
section 45 (Parliamentary and judicial proceedings)
section 46 (Royal Commissions and statutory inquiries)
section 47 (material open to public inspection or on official register)
section 48 (material communicated to the Crown in the course of public business)
section 49 (public records)
section 50 (acts done under statutory authority)
section 61 (recordings of folksongs)
section 68 (incidental recording for purposes of broadcast)
section 69 (recording for purposes of supervision and control of broadcasts)
section 70 (recording for purposes of time-shifting)
section 71 (photographs of broadcasts)
section 75 (recording of broadcast for archival purposes)

Part 2

Rights in Performances Exceptions

paragraph 1C of Schedule 2 (research and private study)

paragraph 1D of Schedule 2 (copies for text and data analysis for non-commercial research)

paragraph 3A of Schedule 2 (disabled persons: copies of recordings for personal use)

paragraph 3B of Schedule 2 (making and supply of accessible copies by authorised bodies)

paragraph 3C of Schedule 2 (making and supply of intermediate copies by authorised bodies)

paragraph 4 of Schedule 2 (illustration for instruction)

paragraph 6 of Schedule 2 (recording by educational establishments of broadcasts)

paragraph 6ZA of Schedule 2 (copying and use of extracts of recordings by educational establishments)

paragraph 6D of Schedule 2 (copying by librarians: supply of single copies to other libraries)

paragraph 6E of Schedule 2 (copying by librarians etc: replacement copies of recordings)

paragraph 6F of Schedule 2 (copying by librarians: single copies of published recordings)

paragraph 6G of Schedule 2 (copying by librarians or archivists: single copies of unpublished recordings)

paragraph 7 of Schedule 2 (copy of work required to be made as condition of export)

paragraph 8 of Schedule 2 (Parliamentary and judicial proceedings)

paragraph 9 of Schedule 2 (Royal Commissions and statutory inquiries)

paragraph 10 of Schedule 2 (public records)

paragraph 11 of Schedule 2 (acts done under statutory authority)

paragraph 14 of Schedule 2 (recordings of folksongs)

paragraph 16 of Schedule 2 (incidental recording for purposes of broadcast)

paragraph 17 of Schedule 2 (recordings for purposes of supervision and control of broadcasts)

paragraph 17A of Schedule 2 (recording for the purposes of time-shifting)

paragraph 17B of Schedule 2 (photographs of broadcasts)

paragraph 21 of Schedule 2 (recording of broadcast for archival purposes)

Part 3

Database Right Exceptions

regulation 20 of and Schedule 1 to the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032)

SCHEDULE 6

PROVISIONS FOR THE BENEFIT OF THE HOSPITAL FOR SICK CHILDREN

Section 301

Interpretation

1

(1) In this Schedule--

"the Hospital" means The Hospital for Sick Children, Great Ormond Street, London,

"the trustees" means the special trustees appointed for the Hospital under the National Health Service Act 1977 or the National Health Service Act 2006; and

"the work" means the play "Peter Pan" by Sir James Matthew Barrie.

(2) Expressions used in this Schedule which are defined for the purposes of Part I of this Act (copyright) have the same meaning as in that Part.

Entitlement to royalty

2

(1) The trustees are entitled, subject to the following provisions of this Schedule, to a royalty in respect of any public performance, commercial publication or communication to the public of the whole or any substantial part of the work or an adaptation of it.

(2) Where the trustees are or would be entitled to a royalty, another form of remuneration may be agreed.

Exceptions

3

No royalty is payable in respect of--

(a) anything which immediately before copyright in the work expired on 31st December 1987 could lawfully have been done without the licence, or further licence, of the trustees as copyright owners; or

(b) anything which if copyright still subsisted in the work could, by virtue of any provision of Chapter III of Part I of this Act (acts permitted notwithstanding copyright), be done without infringing copyright.

Saving

4

No royalty is payable in respect of anything done in pursuance of arrangements made before the passing of this Act.

Procedure for determining amount payable

5

(1) In default of agreement application may be made to the Copyright Tribunal which shall consider the matter and make such order regarding the royalty or other remuneration to be paid as it may determine to be reasonable in the circumstances.

(2) Application may subsequently be made to the Tribunal to vary its order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(3) An application for variation shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application for variation.

(4) A variation order has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(5) The provisions of Chapter VIII of Part I (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this paragraph.

Sums received to be held on trust

6

The sums received by the trustees by virtue of this Schedule, after deduction of any relevant expenses, shall be held by them on trust for the purposes of the Hospital.

Right only for the benefit of the Hospital

7

(1) The right of the trustees under this Schedule may not be assigned and shall cease if the trustees purport to assign or charge it.

(2) The right may not be the subject of an order under section 213 of the National Health Service Act 2006 or section 161 of the National Health Service (Wales) Act 2006 (transfers of trust property by order of the Secretary of State) and shall cease if the Hospital ceases to have a separate identity or ceases to have purposes which include the care of sick children.

(3) Any power of Her Majesty, the court (within the meaning of the Charities Act 2011) or any other person to alter the trusts of a charity is not exercisable in relation to the trust created by this Schedule.

SCHEDULE 7

CONSEQUENTIAL AMENDMENTS: GENERAL

Section 303(1)

Crown Proceedings Act 1947 (c 44)

4

(1)

(2) In the application of sub-paragraph (1) to Northern Ireland--

(a) the reference to the Crown Proceedings Act 1947 is to that Act as it applies to the Crown in right of Her Majesty's Government in Northern Ireland, as well as to the Crown in right of Her Majesty's Government in the United Kingdom, and

(b) in the substituted section 3 as it applies in relation to the Crown in right of Her Majesty's Government in Northern Ireland, subsection (2)(b) shall be omitted.

SCHEDULE 8

REPEALS

Section 303(2)

Chapter	Short title	Extent of repeal
1939 c 107.	Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939.	In section 10(1), the definition of "copyright".
1945 c 16.	Limitation (Enemies and War Prisoners) Act 1945.	In sections 2(1) and 4(a), the reference to section 10 of the Copyright Act 1911.
1949 c 88.	Registered Designs Act 1949.	In section 3(2), the words "or original". Section 5(5). In section 11(2), the words "or original". In section 14(3), the words "or the Isle of Man". Section 32. Section 33(2). Section 37(1). Section 38. In section 44(1), the definitions of "copyright" and "Journal". In section 45, paragraphs (1) and (2). In section 46, paragraphs (1) and (2). Section 48(1). In Schedule 1, in paragraph 3(1), the words "in such manner as may be prescribed by rules of court". Schedule 2.
1956 c 74.	Copyright Act 1956.	The whole Act.
1957 c 6.	Ghana Independence Act 1957.	In Schedule 2, paragraph 12.
1957 c 60.	Federation of Malaya Independence Act 1957.	In Schedule 1, paragraphs 14 and 15.

1958 c 44.	Dramatic and Musical Performers' Protection Act 1958.	The whole Act.
1958 c 51.	Public Records Act 1958.	Section 11. Schedule 3.
1960 c 52.	Cyprus Independence Act 1960.	In the Schedule, paragraph 13.
1960 c 55.	Nigeria Independence Act 1960.	In Schedule 2, paragraphs 12 and 13.
1961 c 1.	Tanganyika Independence Act 1961.	In Schedule 2, paragraphs 13 and 14.
1961 c 16.	Sierra Leone Independence Act 1961.	In Schedule 3, paragraphs 13 and 14.
1961 c 25.	Patents and Designs (Renewals, Extensions and Fees) Act 1961.	The whole Act.
1962 c 40.	Jamaica Independence Act 1962.	In Schedule 2, paragraph 13.
1962 c 54.	Trinidad and Tobago Independence Act 1962.	In Schedule 2, paragraph 13.
1963 c 53.	Performers' Protection Act 1963.	The whole Act.
1964 c 46.	Malawi Independence Act 1964.	In Schedule 2, paragraph 13.
1964 c 65.	Zambia Independence Act 1964.	In Schedule 1, paragraph 9.
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1964 c 93.	Gambia Independence Act 1964.	In Schedule 2, paragraph 12.
1966 c 24.	Lesotho Independence Act 1966.	In the Schedule, paragraph 9.
1966 c 37.	Barbados Independence Act 1966.	In Schedule 2, paragraph 12.
1967 c 80.	Criminal Justice Act 1967.	In Parts I and IV of Schedule 3, the entries relating to the Registered Designs Act 1949.
1968 c 56.	Swaziland Independence Act 1968.	In the Schedule, paragraph 9.
1968 c 67.	Medicines Act 1968.	In section 92(2)(a), the words from "or embodied" to "film". Section 98.
1968 c 68.	Design Copyright Act 1968.	The whole Act.
1971 c 4.	Copyright (Amendment) Act	The whole Act.

	1971.	
1971 c 23.	Courts Act 1971.	In Schedule 9, the entry relating to the Copyright Act 1956.
1971 c 62.	Tribunals and Inquiries Act 1971.	In Schedule 1, paragraph 24.
1972 c 32.	Performers' Protection Act 1972.	The whole Act.
1975 c 24.	House of Commons Disqualification Act 1975.	In Part II of Schedule 1, the entry relating to the Performing Right Tribunal.
1975 c 25.	Northern Ireland Assembly Disqualification Act 1975.	In Part II of Schedule 1, the entry relating to the Performing Right Tribunal.
1977 c 37.	Patents Act 1977.	Section 14(4) and (8). In section 28(3), paragraph (b) and the word "and" preceding it. Section 28(5) to (9). Section 49(3). Section 72(3). Sections 84 and 85. Section 88. Section 104. In section 105, the words "within the meaning of section 104 above". Sections 114 and 115. Section 123(2)(k). In section 130(1), the definition of "patent agent". In section 130(7), the words "88(6) and (7),". In Schedule 5, paragraphs 1 and 2, in paragraph 3 the words "and 44(1)" and "in each case", and paragraphs 7 and 8.
1979 c 2.	Customs and Excise Management Act 1979.	In Schedule 4, the entry relating to the Copyright Act 1956.

1980 c 21.	Competition Act 1980.	Section 14.
1981 c 68.	Broadcasting Act 1981.	Section 20(9)(a).
1982 c 35.	Copyright Act 1956 (Amendment) Act 1982.	The whole Act.
1983 c 42.	Copyright (Amendment) Act 1983.	The whole Act.
1984 c 46.	Cable and Broadcasting Act 1984.	Section 8(8). Section 16(4) and (5). Sections 22 to 24. Section 35(2) and (3). Sections 53 and 54. In section 56(2), the definition of "the 1956 Act". In Schedule 5, paragraphs 6, 7, 13 and 23.
1985 c 21.	Films Act 1985.	Section 7(2).
1985 c 41.	Copyright (Computer Software) Amendment Act 1985.	The whole Act.
1985 c 61.	Administration of Justice Act 1985.	Section 60.
1986 c 39.	Patents, Designs and Marks Act 1986.	In Schedule 2, paragraph 1(2)(a), in paragraph 1(2)(k) the words "subsection (1)(j) of section 396 and" and in paragraph 1(2)(l) the words "subsection (2)(i) of section 93".
1988 c 1.	Income and Corporation Taxes Act 1988.	In Schedule 29, paragraph 5.

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