

Copyright Act, 1981–1982

(of January 22, 1982)*

An Act to reform and modernise copyright law and the law governing similar or related matters

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Citation

Short title

1. This Act may be cited as the *Copyright Act, 1981*.

Interpretation

Definitions

2. In this Act,

“author“ refers to an author within the meaning of [section 7](#);

“audio-visual work“ refers to a work described in [section 20](#);

“broadcast“ refers to a broadcast within the meaning of [section 6](#);

“broadcast“ means a person in the business of making, or who on a regular basis makes broadcasts of any literary, artistic or scientific work;

“fixation“ means the embodiment of sounds, images or both in a material form sufficiently permanent or stable to enable the sounds, images or both, as the circumstances require, to be perceived, reproduced or otherwise communicated during a period of more than a transitory duration;

“folklore“ refers to folklore within the meaning of [section 13](#);

“recording“ means a fixation of any sounds or images or both by means of any disc, tape, perforated roll or other device or other means from or by which the sounds or images or both are capable of being reproduced;

“sound-recording“ refers to such a fixation of only sounds other than the sound track associated with an audio-visual work;

“transfer“ refers to transfer within the meaning of [subsection \(3\) of section 8](#).

Purposes

3. The purposes of this Act are

- (a) to protect, regardless of quality, the proprietary interests in original works of a literary, artistic or scientific character and the proprietary interests established by [Part II](#) in other works derived from or related to literary, artistic or scientific works; and
- (b) to replace the present copyright law of Barbados with laws that will accord with the obligations of Barbados under the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris on July 24th 1971, hereinafter referred to as the “Berne Convention.“

Application of Act

4. This Act applies

- (a) to a literary, artistic or scientific work first published, performed or broadcast in Barbados;
- (b) to a literary, artistic or scientific work of which a citizen of Barbados or an individual who is a permanent resident of Barbados within the meaning of the *Immigration Act* is the author, whether or not the work is published, performed or broadcast;
- (c) to a literary, artistic or scientific work of a foreign author first published in a State that has acceded to the Berne Convention;
- (d) to a literary, artistic or scientific work, whether or not it has been published, performed or broadcast, the author of which
 - (i) is not a citizen or permanent resident of Barbados within the meaning of the *Immigration Act*, but
 - (ii) is a national or resident of a State whose laws, pursuant to treaty or otherwise, make provisions similar to this Act in respect of authors who are citizens or residents of Barbados; and
- (e) to such other matters as are provided for by [Part II](#).

PART I COPYRIGHT

Authors and Works

Literary, artistic and scientific works

5. Literary, artistic and scientific works include

- (a) books, pamphlets and other written works;
- (b) lectures, addresses, sermons and works of a like nature;
- (c) dramatic and dramatico-musical works;
- (d) musical works, whether or not in writing or accompanied by written or unwritten words;
- (e) choreographic works and pantomimes;
- (f) cinematographic and other audio-visual works;
- (g) works of drawing, painting, architecture, sculpture, engraving, lithography and tapestry;
- (h) photographic works, including works expressed by processes analogous to photography;
- (i) works of applied art whether handicraft or produced on an industrial scale; and
- (j) illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science.

Publication, performance and broadcast

6. (1) A literary, artistic or scientific work is published when copies of the work are produced by any means and supplied or made available for supply to the public generally or to any section of the public.

(2) A performance of a literary, artistic or scientific work occurs when the work is performed, communicated or delivered to and in the presence of the public or any section of the public or is performed, communicated or delivered in the circumstances referred to in [subsection \(3\) of section 30](#) for later delivery to the public.

(3) A broadcast of a literary, artistic or scientific work occurs when the work is transmitted, for reception by the general public, over a distance by means of radio, television, electro-magnetic emissions, light beams or other means, or by wire or cable or other means.

(4) A reference in this Act to any work being lawfully made public means, in relation to a particular work, that the work has been published, performed or broadcast with the consent of the author of the work or otherwise in accordance with any authority under this Act to publish, perform or broadcast the work.

Author

7. (1) For the purposes of this Act, the author of a literary, artistic or scientific work is the creator or maker of the work; and, in particular, includes,

- (a) in relation to a literary work, the author of the work;
- (b) in relation to a musical work, the composer of the music and in relation to accompanying words, if any, the author of the accompanying words;
- (c) in relation to an artistic work other than a photograph, the artist;
- (d) in relation to a photograph, the photographer; and
- (e) in relation to any other work, the individual who creates the work, however that function is termed.

(2) A reference to author's rights in a work refers; in relation to a particular work, to all the rights vested under this Act in the author in respect of that work, but subject to [subsection \(3\)](#).

(3) Author's rights in relation to a work include any rights that are lawfully transferred to any other person from the author, or from a person lawfully claiming under the author, to publish, perform or broadcast that work or otherwise to exercise any of the rights of the author in the work other than the right vested under [section 11](#).

Transfer of Author's Rights

Transfer of rights

8. (1) Subject to [subsection \(2\)](#), the rights vested in an author by this Act in respect of a work are transferable by the author.

(2) The rights vested in an author under [section 11](#) in respect of a work are not transferable otherwise than by succession.

(3) For the purposes of this Act, "transfer" extends to every mode (whether direct or indirect, voluntary or involuntary, absolute or conditional) of disposing of or parting with any right vested under this Act or of any interest in any such right, including retention of title to the right or interest as security for any obligation.

Transfer formalities

9. (1) To be valid, the transfer of the rights vested in an author by [section 10](#) in respect of a work must be in writing and signed by the person who is transferring the rights or any part of the rights in respect of the work; but this subsection does not prevent a transfer of those rights by operation of law.

(2) The transfer of the ownership in an original work, or in one or more copies of a work, does not transfer to the new owner of the original or copy any of the author's rights in the work.

Author's Rights

Economic rights

10. Subject to [sections 24 to 29](#), the author of an original literary, artistic or scientific work has the exclusive right to do, or to authorise another person to do, any of the following acts in relation to the entire or any portion of his original work, that is to say:

- (a) to reproduce the work;
- (b) to translate, adapt, arrange or otherwise transform the work; or
- (c) to communicate the work to the public by publication, performance, broadcast or by any other means.

Moral rights

11. The author has, in respect of his work, the exclusive right

- (a) to claim authorship of his work;
- (b) subject to [section 25](#), to demand that his authorship be indicated in connection with any of the acts mentioned in [section 10](#); and

- (c) to object to and to have relief from any distortion, mutilation or other modification of or any derogatory act committed in relation to his work, if the distortion, mutilation, modification or derogatory act is likely to have an adverse effect on his character or reputation.

Translators, compilers, arrangers

12. (1) A person who

- (a) makes a work by translation, adaptation, arrangement or other transformation of any literary, artistic or scientific work; or
- (b) compiles, as a work, a collection of literary, artistic or scientific works that, because of the selection and arrangement of its contents, constitutes an intellectual creation such as (by way of example but without limiting the generality of this paragraph) encyclopaedias and anthologies,

if his work is original, has, in relation to his work, the rights of an author under [sections 10](#) and [11](#).

(2) [Subsection \(1\)](#) does not affect any author's rights that exist under this Act in respect of any work used in the making or compiling of a work described in that subsection.

Folklore

13. (1) In respect of folklore, that is to say, all literary and artistic works that

- (a) constitute a basic element of the traditional and cultural heritage of Barbados;
- (b) were created in Barbados by various groups of the community; and
- (c) survive from generation to generation,

the author's rights vest in the Crown to the same extent as if the Crown had been the original creator of the folklore.

(2) The rights of the Crown in respect of folklore are enforceable at the instance of the Attorney General.

Method of determining copyright entitlement

14. In determining the person vested with author's rights in respect of a literary, artistic or scientific work, the following principles apply:

- (a) if one individual was the author of the work, the rights vest in that individual;
- (b) if two or more individuals were the authors of the work, the rights vest in them jointly; and
- (c) if there is no evidence to the contrary, the author of a work is the individual whose name is indicated on the work as its author.

Employed author

15. Subject to any enactment relating to contracts of employment and to the terms of any specific contract of service or for services, when a work is created by an author

- (a) in the course of his employment for the Crown, a body corporate or another individual; or

- (b) under a contract for services with, or as a work commissioned by, the Crown, a body corporate or another individual,

then, in respect of that work, the author's rights under [sections 10](#) and [11](#) vest in the Crown, body corporate or other person who employed the author or commissioned the work.

Public benefit works

16. (1) No author's rights vest in any person in respect of the following works:

- (a) laws enacted by Parliament and published by the Government;
- (b) statutory instruments made under the laws of Barbados and published by the Government;
- (c) decisions by courts or tribunals that are made in the administration of justice in Barbados;
- (d) reports made by any body established in Barbados to make a public inquiry into any matter and published by the Government;
- (e) translations made at public expense of any works referred to in [paragraphs \(a\) to \(e\)](#); and
- (f) news, that is to say, the reporting of fresh events or new information, whether published in written form, by broadcast or communicated to the public by other means.

(2) The Crown is the trustee for the public of the works described in [paragraphs \(a\) to \(f\) of subsection \(1\)](#); and the Crown may, in respect of those works, apply to the High Court for the purpose of objecting to and obtaining relief, by way of injunction, from any distortion, mutilation or other modification of or derogatory act committed in relation to any of those works, if the distortion, mutilation or other modification or derogatory act is likely to cause a breach of the peace or to be a dishonest artifice amounting to a fraud on the public.

Duration of Author's Rights

Duration: economic rights

17. (1) Unless expressly otherwise provided in this Act, the author's rights vested under [section 10](#) in respect of a work exist for the life of the author and for the fifty calendar years immediately following the year of his death.

(2) When the author's rights under [section 10](#) in a work are vested jointly in more than one author, the rights exist for the life of the last surviving author and for the fifty calendar years immediately following the year of his death.

(3) When, under [section 15](#), the author's rights under [sections 10](#) and [11](#) in a work are vested in the Crown, a body corporate or an individual, the rights exist for the life of the individual who made or created the work and for the fifty calendar years immediately following his death; or, if the work was made or created by two or more individuals, the rights exist for the life of the last survivor of those individuals and for the fifty calendar years immediately following his death.

Duration: moral rights

18. The author's rights vested under [section 11](#) exist for the same period as that prescribed by [sections 17](#), [19](#), [20](#) or [21](#) for the rights vested in the author under [section 10](#), except that the rights

of an author under [section 11](#) are enforceable by the author or his successors in title whether or not the rights vested in the author by [section 10](#) are still vested in the author or his successors.

Duration: anonymous authors

19. Where a work is published anonymously or under a pseudonym, the author's rights in the work exist for the fifty calendar years immediately following the year in which the work was first published; but, if during that period the identity of the author of the work is revealed or his identity is no longer in doubt, the rights exist, for such period specified under [section 17](#), as the circumstances require.

Duration: audio-visual works

20. (1) When a work is an audio-visual work, the author's rights in the work exist for the fifty calendar years immediately following the year in which the work was first made available to the public; but if the work is not made available to the public within the first fifteen calendar years after the work was completed, the author's rights to the work cease at the end of that fifteenth calendar year.

(2) An audio-visual work is the aggregate of a series of related visual images, together with any accompanying sounds, capable of being shown as a moving picture by means of a mechanical, electronic or other device and irrespective of the nature of the material support in which the visual images, and any accompanying sounds, are embodied.

Duration: photographic works

21. (1) When a work is a photographic work, the author's rights in the work exist for the fifty calendar years immediately following the year in which the work was first made available to the public.

(2) A photographic work is a work that is produced by any process analogous to photography including photo-lithographic work but does not include within its ambit any part of an audio-visual work.

Duration: folklore

22. The rights vested in the Crown under [section 13](#) in respect of folklore exist in perpetuity.

Duration: public benefit

23. The right of the Crown under [section 16](#) exists

- (a) in respect of laws, statutory instruments and decisions of courts or tribunals whether of a judicial or administrative nature, for the period during which those laws, instruments or decisions are relevant to the administration of justice in Barbados; and
- (b) in respect of other works mentioned in [section 16](#), for a period of ten calendar years immediately following the year in which the work was published.

Limitation of Author's Rights

Permitted uses of works

24. (1) The use of a literary, artistic or scientific work, either in the original language or in translation, as described in [paragraphs \(a\) to \(h\)](#), is not an infringement of the author's rights in that work and does not require the consent of the author of the work, namely:

- (a) the reproduction, or the translation, adaptation, arrangement or other transformation of the work for the user's personal use only, if the work has been lawfully made public;
- (b) subject to [subsection \(2\)](#), the inclusion, with mention of the source and the name of the author, of quotations from the work in another work, including quotations from articles in newspapers or periodicals in the form of press summaries, if the work from which the quotations have been taken has been lawfully made public;
- (c) subject to [subsection \(3\)](#), the use for teaching of the work by way of illustration in publications, broadcasts or recordings or, to the extent justified for the purpose, for the communication for teaching purposes of the work by way of a broadcast for use in schools, universities, professional training or public education, if the work has been lawfully made public;
- (d) in the case of
 - (i) an article published in one or more newspapers or in one or more periodicals on current economic, political or religious topics, or
 - (ii) any broadcast on current economic, political or religious topics,the reproduction of the article or broadcast in the press or the communication of the article or broadcast to the public, if the source of the article or broadcast when so used is clearly indicated, unless the article or broadcast, when first published or made, was accompanied by an express condition prohibiting its use without consent;
- (e) the reproduction or making available to the public by means of photographic works, audio-visual works or other communication means of any work that can be seen or heard in the course of the reporting of the fresh event or new information, if
 - (i) the work was reproduced or made available for the purpose of reporting by a news medium of fresh events or of new information; and
 - (ii) the use of the work does not extend beyond that justified by the purpose of keeping the public informed of current events;
- (f) the reproduction of works of art or of architecture in an audio-visual work for cinema or television or in a broadcast by television and the communication to the public of any of those works of art or architecture so produced, if those works
 - (i) are permanently located in a place where they can be viewed by the public, or
 - (ii) are included in an audio-visual work for cinema or television by way only of background or as incidental to essential matters represented;
- (g) subject to [subsection \(4\)](#), the reproduction in the news media or the communication to the public of
 - (i) any political speech delivered in public,
 - (ii) any speech delivered in public during legal proceedings, or
 - (iii) any lecture, address, sermon or other work of a similar nature delivered in public, if the use by reproduction or communication to the public is exclusively for the purpose of reporting fresh events or new information;

(h) subject to [subsection \(5\)](#), the reproduction, by recordings, photography or similar process by public libraries, non-commercial documentation centres, scientific institutions and education establishments, of literary, artistic or scientific works that have been lawfully made public before the reproduction is made.

(2) [Paragraph \(b\) of subsection \(1\)](#) does not apply in respect of any particular quotations unless the quotations described in that paragraph are compatible with fair practice and the extent of the quotations does not exceed that justified for the purpose of the work in which the quotations are used.

(3) [Paragraph \(c\) of subsection \(1\)](#) does not apply in respect of any particular work unless the use described in that paragraph is compatible with fair practice and the source of the work used and the name of the author are mentioned in the relevant publication, broadcast or recording.

(4) [Paragraph \(g\) of subsection \(1\)](#) does not apply unless the reproduction therein described and the number of copies made of the reproduction are limited to the need.

(5) [Paragraph \(h\) of subsection \(1\)](#) does not apply in respect of any particular establishments mentioned in that paragraph unless the reproduction and copies made thereof

- (a) are limited to the needs of the activities of that establishment;
- (b) do not conflict with the normal exploitation of the work reproduced; and
- (c) do not unreasonably affect the author's rights in the work.

News reports: saving

25. Author's rights in a work are not infringed by the accidental or incidental inclusion of the work in the reporting by a news broadcast of fresh events or of new information.

Ephemeral recordings

26. (1) When a work is lawfully broadcast by a broadcaster, the broadcaster may, by means of his own facilities, make, for the purpose of his own broadcast, a recording of the broadcast and produce one or more copies of the recording for his own use.

(2) Subject to [subsection \(3\)](#), the recording authorised by [subsection \(1\)](#), and all the copies made of it, shall be destroyed by the broadcaster within six months from the date on which the recording was made.

(3) If the recording authorised by [subsection \(1\)](#) is of an exceptional documentary character, a copy of the recording may be preserved for presentation to the official archives of Barbados.

(4) The preservation under this section of a copy of a recording of the broadcast of a work for the official archives of Barbados does not otherwise affect the author's rights in the work that was broadcast.

(5) Whether a recording of a broadcast is of an exceptional documentary character is a question of fact to be determined after having regard to all the circumstances and, in particular, to the need for the enhancement of the historical and cultural aspects of life in Barbados.

Non-contractual translation licences

27. A person may, without the consent of the author of a work, translate the work into the English language and publish the work of translation in Barbados under a licence which may be granted by the Minister in accordance with the rules set out in the [First Schedule](#) for that purpose.

Non-contractual reproduction licences

28. A person may, without the consent of the author of the work, reproduce the work and publish in Barbados a particular edition of the work by reproduction under a licence, which may be granted by the Minister in accordance with the rules set out in the [Second Schedule](#) for that purpose.

Permissible recordings

29. (1) Subject to [subsection \(2\)](#), where, in respect of a musical work, a sound-recording has been made of the performance of the work with the consent of the author of the music and of the accompanying words, if any, and the recording has been made in Barbados or a copy of it has been imported into Barbados, a person may, without the consent of the author of either the music or of any accompanying words, make a new recording of a performance of the same musical work.

(2) When a sound-recording is made in Barbados pursuant to [subsection \(1\)](#) of the performance of a musical work, the person who made the recording shall pay to the author of the music and of the accompanying words, if any, such remuneration, or remuneration, at such rate, as the Minister may, particularly or generally, prescribe by order.

(3) The making of a recording pursuant to this section does not otherwise affect the author's rights in the musical work or in the accompanying words, if any.

PART II NEIGHBOURING RIGHTS

Rights of Performers

Performers rights

30. (1) Subject to [sections 40](#), [42](#) and [43](#), a performer has the exclusive right to prevent any person, without the consent of the performer,

- (a) from broadcasting his performance;
- (b) from making a recording of his performance; or
- (c) from reproducing a recording of his performance.

(2) A performer is any actor, singer, musician, dancer or other individual who acts, sings, delivers, declaims, plays in or otherwise performs a literary or artistic work and includes an identifiable or variety group performing together.

(3) For the purposes of this section, "performance" includes performance, communication or delivery of a literary or artistic work whether or not at the relevant time the work was being publicly performed, communicated or delivered.

Broadcast performances

31. (1) Subject to this section,

- (a) consent given by a performer to a broadcaster to make a broadcast of his performance is not consent to other broadcasters to broadcast that performance;

- (b) consent given by a performer to a broadcaster to make a broadcast of his performance is not consent to make a recording of that performance;
- (c) consent given by a performer to a broadcaster to broadcast and to make a recording of his performance is not consent to make a reproduction of the recording; and
- (d) consent given by a performer to a broadcaster to make a recording of his performance is not consent to broadcast the performance from the recording or from any reproduction of the recording.

(2) [Subsection \(1\)](#) applies in the absence of any agreement to the contrary entered into with the performer concerned and in the absence of any inference to the contrary arising from a contract of service between the performer concerned and the broadcaster.

(3) Where, in respect of a performance that is broadcast, the performer gives the broadcaster consent in writing to make an audio-visual work of the performance, [paragraphs \(c\) and \(d\) of subsection \(1\)](#) do not apply in respect of that performance.

(4) Nothing in this section deprives a performer of the right to enter into a contract regarding any performance on terms and conditions more favourable to him in respect of any use of that performance than that provided by the performer's rights under this Act.

Consent of performer

32. (1) Where the consent of the performer is required in respect of any performance, the consent may be given by the performer personally or by a person authorised by him in writing to give consent on behalf of the performer.

(2) When the consent of the performer is given in respect of a performance by a person holding himself out

(a) to be the performer thereof, or

(b) to be the person authorised by the performer thereof to give consent on his behalf, the consent has effect unless, at the time the consent was given, the person receiving the consent knew or ought reasonably to have known that the holding out was improper or unauthorised, as the case may be.

Duration of right

33. The rights vested in a performer under [section 30](#) in respect of a performance exist for the twenty calendar years after the end of the year in which the performance occurred.

Rights of Producers of Phonograms

Phonograms

34. A phonogram is a sound-recording of the sounds of a performance of a literary or artistic work or of other sounds.

Producers' rights

35. (1) The producer of a phonogram has the exclusive right to prevent any person, without the consent of the producer,

- (a) from making a reproduction of a phonogram the original sound-recording of which was lawfully made in Barbados;
- (b) from importing, for the purpose of distribution to the public, a phonogram the original sound-recording of which was lawfully made in Barbados; or
- (c) from distributing to the public, whether by sale or otherwise, any reproduction of the phonogram the original sound-recording of which was lawfully made in Barbados.

(2) The consent of the producer of a phonogram must be given in writing by him personally or by some person authorised in writing by him to give consent on his behalf.

(3) A producer of a phonogram means the person who first lawfully makes in Barbados a sound-recording of the sounds of a performance or the other sounds constituting the aural effects of the phonogram.

(4) For the purposes of this section, a sound-recording is lawfully made when it is made without infringing any other person's rights under this Act in respect of the performance or sounds constituting the aural effects of the phonogram.

(5) When, pursuant to a contract with the producer of a phonogram, a person makes in Barbados a reproduction of the sounds recorded on a phonogram produced outside Barbados and forwarded to him for reproduction in Barbados pursuant to that contract, the sound-recording so produced in Barbados shall, for the purposes of [subsection \(1\)](#), be deemed to be an original sound-recording made in Barbados.

Duration: producers' rights

36. The rights vested in the producer of a phonogram under [section 35](#) exist for a period of twenty calendar years immediately following the end of

- (a) the year in which the phonogram was first made available in Barbados to the public, if it was made available to the public in Barbados; or
- (b) if the phonogram is not made available to the public in Barbados, the end of the year in which the original sound-recording for the phonogram was first lawfully made in Barbados within the meaning of [section 35](#).

Notice of rights

37. (1) Each copy of, or container for a copy of, a phonogram made available to the public for commercial purposes must have disclosed thereon a notice consisting of the letter P, capitalized and placed within a circle and accompanied by an indication of the year the recording for the phonogram was first lawfully made in Barbados; all of which must be prominently displayed on the copy of, or on the container for the copy of, the phonogram to give reasonable notice of the claim of all rights respecting the use of the phonogram.

(2) When a copy of the phonogram or the copy's container does not identify the producer of the phonogram by having his name, trade mark or other designation indicated on the copy or container, the notice referred to in [subsection \(1\)](#) must include the name of the person who owns the producer's rights under this Act in that phonogram.

(3) When a copy of a phonogram or the copy's container does not identify the performer whose performance constitutes any of the aural effects of the phonogram, the notice referred to in [subsection \(1\)](#) must include the name of the person who owns the performer's rights under this Act in that performance.

Remuneration

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

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

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

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

Duration: of remuneration

39. The obligation to pay remuneration to the producer of a phonogram and to any performer whose performance constitutes any of the aural effects of the phonogram exist for the same period that the producer's rights under [section 36](#) in that phonogram exist.

Special licences

40. (1) Without affecting any other provision of this Act that exempts a person from requiring the consent of the producer of a phonogram, where a person applies in writing to the Minister for permission to produce a duplication of the phonogram, that is to say, any article that contains any sounds taken directly or indirectly from any recording of sounds contained on that phonogram, the Minister may, by licence, authorise the person who so applies to produce that article.

(2) The production of a duplication of a phonogram pursuant to a licence under [subsection \(1\)](#) does not infringe the rights under this Act of either the producer of the phonogram from which the sounds for the article was taken or any performer whose performance is included in the aural effects of that phonogram, if

- (a) the duplication is for use exclusively for the purposes of education or scientific research;
- (b) the duplication is for distribution in Barbados only; and
- (c) the person authorised by the licence to produce the duplication gives an undertaking in writing to pay the producer of the phonogram such remuneration as the Minister determines with regard to the number of duplications distributed in Barbados.

(3) [Section 25](#) applies, with any necessary modifications, to any duplication authorized by licence under this section.

Rights of Broadcasters

Broadcasters' rights

41. (1) The broadcaster of a broadcast that is lawfully made has the exclusive right to prevent any other person, without the broadcaster's consent,

- (a) from rebroadcasting the broadcast;
- (b) from making a recording of the broadcast; or
- (c) subject to [subsection \(4\)](#), from reproducing a recording of the broadcast.

(2) A rebroadcast occurs when one broadcaster broadcasts any part of the broadcast of another broadcaster.

(3) A broadcast is lawfully made when the broadcast is made without infringing the rights under this Act of any other person.

(4) [Paragraph \(c\) of subsection \(1\)](#) does not apply when the reproduction described in that paragraph is made from a recording made under the authority of and for any purpose described in [section 24](#) if the reproduction is not used for other purposes.

Ephemeral recording

42. (1) When a broadcaster, by means of his own facilities and for his own broadcast, makes a recording of a broadcast or performance, a reproduction of the recording of the broadcast or performance or makes a recording of a phonogram, no consent is required and there is no infringement of the rights under this Act of any person, if,

- (a) in respect of each broadcast of the recording of the broadcast, performance, reproduction or phonogram, the broadcaster had the right under this Act to make that particular broadcast;
- (b) in respect of each recording, reproduction or phonogram made pursuant to this section, the broadcaster had the right to make the broadcast on which the recording, performance, reproduction or phonogram is used; and
- (c) subject to [subsection \(2\)](#), each recording made under this section and all reproductions of the recording are destroyed within the time limited by section 26 for ephemeral recordings.

(2) [Subsections \(3\) to \(5\) of section 26](#) apply, with necessary modifications, in respect of a single copy of any recording made under the authority of this section.

Permitted Recordings

Permissible recordings

43. (1) A fixation described in this provision that would otherwise be an infringement of any rights under this Part of a performer, broadcaster, or producer of a phonogram, that is to say:

- (a) a recording of a broadcast of any performance;
- (b) a reproduction of a recording of a broadcast of any performance; or
- (c) a duplication of a phonogram,

may be made without the consent of the performer, broadcaster or producer, as the case requires, and is not an infringement of the rights under this Part of any of those persons, if the fixation is a permitted recording.

(2) A fixation described in [subsection \(1\)](#) is a permitted recording if

- (a) it is for the maker's personal use only;

- (b) it is made for and in the course of the reporting of fresh events and new information by any news medium, and no more than short excerpts of the broadcast, performance or phonogram are used in the reporting by the news medium;
- (c) it is done exclusively for teaching purposes or for scientific research;
- (d) it consists of quotations in the form of short excerpts of a broadcast, performance or phonogram and the quotations are compatible with fair practice and justified by the purpose of keeping the public informed; or
- (e) it is made for any other purpose for which a consent would not be required by virtue of [section 24](#) in similar circumstances from an author of a literary, artistic or scientific work.

PART III ADMINISTRATION

Criminal Sanctions

Criminal sanctions

44. (1) No person shall knowingly infringe any right vested in any person under this Act.

(2) A person who contravenes [subsection \(1\)](#) is guilty of an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of twelve months or to both.

(3) If the offence under [subsection \(2\)](#) is a continuing offence, the offender is liable to an additional fine of one thousand dollars for each day or part of a day during which the offence continues.

Fraud on performer

45. (1) A person is guilty of an offence who, not being the performer or person authorised by the performer to give consent on his behalf, purports to consent as or on behalf of the performer

- (a) to the making of a broadcast of the performance of that performer; or
- (b) to the making of a fixation of the broadcast of that performance of the performer.

(2) A person who is guilty of an offence under [subsection \(1\)](#) is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of twelve months, or to both.

Folklore offence

46. (1) Without the written consent of the Minister, no person shall knowingly import into Barbados or sell, offer or expose for sale or distribute in Barbados any copies made outside Barbados of

- (a) any works of folklore; or
- (b) any translations, adaptations, arrangements or other works or transformation of folklore.

(2) A person who contravenes [subsection \(1\)](#) is guilty of an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of twelve months, or to both.

Compensation

47. In addition to any punishment imposed by a court in respect of a prosecution of an offence under [section 44](#), [45](#) or [46](#), the court may order

- (a) that all amounts arising out of the offence and received by the accused be accounted for by him and paid to the persons entitled under this Act to those amounts; and
- (b) that all copies, recordings, reproductions, duplications, and other infringing material obtained from, and all implements or devices used in, the commission of the offence be seized and disposed of as the court may direct having regard to the persons whose rights were infringed and the extent of that infringement.

Limitation

48. A prosecution for an offence under [section 44](#), [45](#) or [46](#) may be brought at any time within five years from the date the offence was committed, or the last date on which the continuing offence was committed.

Civil Sanctions

Civil remedies

49. (1) Any person whose rights under this Act are in imminent danger of being infringed or are being infringed may institute proceedings in the High Court

- (a) for an injunction to prevent the infringement or to prohibit the continuation of the infringement; or
- (b) for recovery of damages for the infringement.

(2) The grant of an injunction under [subsection \(1\)](#) does not deprive a person of any damages that may be awarded to him for loss sustained by him as a result of infringement or imminent infringement of his rights under this Act.

(3) An action may be brought by a person who sustains damage by reason of infringement of his rights under this Act whether the person who committed that infringement has been successfully prosecuted under this Act or not.

MISCELLANEOUS

Reciprocity

50. The Minister may, by order, provide for reciprocal treatment, in relation to those rights to which this Act relates, to be given to any country that provides protection for similar rights in respect of Barbados, as given by this Act.

Regulations

51. The Minister may make regulations respecting

- (a) the administration of matters relating to the rights to which this Act relates;
- (b) the collection of royalties and distribution thereof to persons entitled thereto; and

(c) any matter that is necessary for the effective operation of this Act.

Binding Crown

52. The Crown is bound by this Act.

Consequential amendments

53. (1) The Fourth Schedule to the *Magistrates' Jurisdiction and Procedure Act* is amended by deleting the words and figures "Cap. 300 Copyright Act **section 11**".

(2) **Section 3** of the *National Emblems and National Anthem (Regulation) Act* is repealed and the following substituted:

"3. Notwithstanding the provision of any Act to the contrary, the copyright in the words and music of the National Anthem and in the design of the National Emblems is vested in the Crown in perpetuity."

Cap. 300: 1 & 2 Geo. V, C. 46

54. The *Copyright Act* is repealed; and the *Copyright Act, 1911*, of the United Kingdom Parliament ceases to have effect in Barbados.

Savings

55. Any copyright or other rights similar to those described in this Act that were vested in any person immediately before the commencement of this Act continue to be vested in him and are enforceable by him in the same manner as other rights under this Act.

Commencement

56. This Act comes into operation on a day to be fixed by proclamation.

FIRST SCHEDULE

(Section 27)

Translation Licences

Works covered

1. The provisions of this Schedule apply to works that have been published in a printed or in an analogous form of reproduction.

Application Cap. 190

2. (1) Any citizen or permanent resident of Barbados within the meaning of the *Immigration Act* may, after the expiration of the period mentioned in [subparagraph \(2\)](#), apply to the Minister for a licence to make a translation of a work into English and to publish the translation in a printed or analogous form of reproduction in Barbados.

(2) No licence may be granted by the Minister under this Schedule in respect of a work until the expiration of three years from the date of first publication of the work.

Grant of licence

3. (1) Before granting a licence under this Schedule in respect of a work, the Minister must determine

- (a) that no translation of the work into English has, in a printed or in an analogous form of reproduction, been published by or with the authorisation of the owner of the right of translation, or, if there had been such a publication, that all previous editions in English are out of print;
- (b) that the applicant for the licence has established that he either has requested, and has been denied, authorisation from the owner of the right of translation or, after due diligence on his part, was unable to find the owner;
- (c) that at the same time as addressing to the owner the request referred to in [clause \(b\)](#), the applicant for the licence had informed any national or international information centre designated for this purpose by the government of the country in which the publisher of the work to be translated is believed to have his principal place of business; and
- (d) that, if the applicant for the licence could not find the owner of translation, the applicant had sent, by registered airmail, a copy of his application to the publisher whose name appears on the work and another copy of the application to any information centre referred to in [clause \(c\)](#) or, in the absence of such an information centre, to the Unesco International Copyright Information Centre.

(2) No licence may be granted by the Minister in respect of a work unless the owner of the right of translation in the work, if known or located, has been given an opportunity to be heard.

(3) No licence may be granted to an applicant in respect of a work until six months

- (a) from the date on which the applicant complies with the requirement of [sub-paragraphs \(1\)\(b\)](#) and [\(1\)\(c\)](#); or
- (b) if the identity or the address of the owner of the right of translation of the work is unknown, from the date on which the applicant also complies with the requirements of [sub-paragraph \(1\)\(d\)](#).

(4) No licence may be granted by the Minister when, in respect of the work for which the licence was applied for, a translation into English has, in a printed or in an analogous form of reproduction, been published, by or with the authorisation of the owner of the translation right, during the period limited by [sub-paragraph \(3\)](#).

(5) For works composed mainly of illustrations, a licence may only be granted by the Minister under this Schedule if the conditions of the [Second Schedule](#) are also complied with.

(6) No licence may be granted by the Minister in respect of a work when the author of the work has withdrawn all copies of that work from circulation.

Scope

4. (1) A licence under this Schedule

- (a) is valid for the purpose of teaching, scholarship or research;
- (b) allows publication only in a printed or an analogous form of reproduction and, subject to [subparagraph \(2\)](#), only in Barbados;
- (c) does not extend to the export of copies made under the licence, except as provided in [subparagraph \(3\)](#);

- (d) is non-exclusive; and
- (e) is non-transferable.

(2) Notwithstanding [sub-paragraph \(1\)\(b\)](#), where the Minister is satisfied that facilities do not exist in Barbados for the printing or reproduction, or that existing facilities are incapable for economic or practical reasons of ensuring printing or reproduction, of the work for which the licence is requested, the reproduction may be made outside Barbados, if

- (a) the country where the work of reproduction is done is party to the Berne Convention or to the Universal Copyright Convention;
- (b) all copies reproduced are sent to the licensee in one or more bulk shipments for distribution exclusively in Barbados and the contract between the licensee and the establishment doing the work of reproduction so requires;
- (c) the contract provides that the establishment engaged for doing the work of reproduction guarantees that the work of reproduction is lawful in the country where it is done; and
- (d) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a licence has been granted under this Schedule.

(3) The licence must provide for such just compensation in favour of the owner of the right of translation as is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in Barbados and owners of translation rights in the country of the owner of the right of translation.

(4) If the licensee is unable, by reason of currency regulations, to transmit the compensation to the owner of the right of translation, it is a condition of his licence that he report the fact to the Minister, who must make all efforts, by the use of international machinery, to ensure transmittal of the compensation in internationally convertible currency or its equivalent.

(5) As a condition of maintaining the validity of the licence issued under this Schedule to translate a work, the translation must be correct and all published copies must include the following:

- (a) the original title and name of the author of the work;
- (b) a notice in English stating that the copy is available for distribution only in Barbados; and
- (c) if the work that is translated was published with a copyright notice, a reprint of that notice.

(6) A license issued under this Schedule in respect of a work terminates when a translation of the work in the English language and with substantially the same content as the translation published under the licence is,

- (a) in a printed or in an analogous form of reproduction, and
 - (b) by or with the authorisation of the owner of the translation,
- published in Barbados at a price reasonably related to that normally charged in Barbados for comparable works.

(7) Any copies of a translation of a work made under the licence before the licence terminates pursuant to [sub-paragraph \(6\)](#) may continue to be distributed in Barbados until the stock of the copies is exhausted.

Broadcaster

5. (1) A licence under this Schedule may be granted by the Minister to a Barbadian broadcaster if all the following conditions are complied with:

- (a) the translation is made from a copy made and acquired in accordance with the laws of Barbados;
- (b) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialised technical or scientific research to experts in a particular profession;
- (c) the translation is used exclusively for the purpose specified in [clause \(b\)](#), through broadcasts that are lawfully made and that are intended for recipients in Barbados, including broadcasts made through the medium of recordings that have been made lawfully and for the sole purpose of such broadcasts;
- (d) recordings of the translation are not used by broadcasters other than those having their headquarters in Barbados; and
- (e) all uses made of the translation are without any commercial purpose.

(2) A licence may also be granted, under all the conditions provided in [sub-paragraph \(1\)](#), to a Barbadian broadcaster to translate any text incorporated in an audio-visual work that was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Application

6. (1) [Section 27](#) and this Schedule apply to works whose country of origin is the country, or any other country whose name, with reference to this Schedule, is indicated in an order made by the Minister.

(2) The Minister may, by order, discontinue the application of [section 27](#) and this Schedule.

SECOND SCHEDULE

(Section 28)

Reproduction Licences

Works covered

1. Subject to [paragraph 5](#), this Schedule applies to works that have been published in a printed or in an analogous form of reproduction.

Application Cap. 190

2. (1) Any citizen or permanent resident of Barbados within the meaning of the *Immigration Act* may, after the expiration of the period mentioned in [subparagraph \(2\)](#), apply to the Minister for a licence to reproduce and publish a particular edition of a work in a printed or in an analogous form of reproduction.

(2) No licence may be granted until the expiration of whichever of the following periods is applicable:

- (a) three years for works of technology and of the natural and physical sciences, including mathematics;
- (b) seven years for works of fiction, poetry, drama and music, and for art books; or
- (c) five years for all other works;

commencing from the date of first publication of the particular edition of the work.

Grant of licence

3. (1) Before granting a licence under this Schedule in respect of any work, the Minister must first determine:

- (a) that no distribution, by or with the authorisation of the owner of the right of reproduction of any edition of the work, of copies in printed or analogous forms of reproduction of that particular edition has taken place in Barbados to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in Barbados for comparable works, or that, under the same conditions, copies of that particular edition have not been on sale in Barbados for a continuous period of a least six months;
- (b) that the applicant for the licence has established that he either has requested, and has been denied, authorisation from the owner of the right of reproduction, or that, after due diligence on his part, he was unable to find the owner;
- (c) that, at the same time as addressing to the owner the request referred to in [clause \(b\)](#), the applicant for the licence had informed any national or international information centre designated for this purpose by the government of the country in which the publisher of the work to be reproduced is believed to have his principal place of business; and
- (d) that, if the applicant could not find the owner of the right of reproduction, the applicant had sent, by registered airmail, a copy of his application to the publisher whose name appears on the work and another copy of the application to any information centre referred to in [clause \(c\)](#), or, in the absence of such a centre, to the Unesco International Copyright Information Centre.

(2) No licence may be granted by the Minister under this Schedule to reproduce a work unless the owner of the right of reproduction of that work, if known or located, has been given an opportunity to be heard.

(3) Where the three-year period referred to in [sub-paragraph \(a\) of paragraph 2\(2\)](#) applies in respect of an application to reproduce a work, no licence may be granted by the Minister in respect of that work until the expiration of six months computed from the date on which the applicant complies with the requirements mentioned in [sub-paragraphs \(1\)\(b\)](#) and [\(1\)\(c\)](#) or, if the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant also complies with the requirement mentioned in [sub-paragraph \(1\)\(d\)](#).

(4) When the seven-year or five-year periods referred to in [paragraph 2\(2\)\(b\)](#) or [\(2\)\(c\)](#) apply and when the identity or the address of the owner of the right of reproduction of the work in respect of which the application to reproduce has been made is unknown, no licence may be granted under this Schedule until the expiration of three months computed from the date on which the copies referred to in [sub-paragraph \(1\)\(d\)](#) have been mailed.

(5) No licence may be granted by the Minister in respect of the reproduction of a work when a distribution or placing on sale of the work as described in [subparagraph \(1\)\(a\)](#) has taken place during the period of six or three months referred to in [sub-paragraph \(3\)](#) or [\(4\)](#).

(6) No licence may be granted by the Minister in respect of a work if the author of the work has withdrawn from circulation all copies of the edition that is the subject of the application.

(7) When the edition that is the subject of an application under this Schedule is a translation, the licence may only be granted if the translation is in English and was published by or with the authorisation of the owner of the right of translation.

Scope

4. (1) A licence under this Schedule in respect of the reproduction of a work

- (a) is valid only for use in connection with systematic instructional activities;
- (b) subject to [paragraph 5](#), only allows publication in a printed or in an analogous form of publication at a price reasonably related to, or lower than, that normally charged in Barbados for a comparable work;
- (c) only allows publication in Barbados and does not extend to the export of copies made under the licence, but subject to [sub-paragraph \(2\)](#);
- (d) is not exclusive; and
- (e) is not transferable.

(2) Where the Minister is satisfied that facilities do not exist in Barbados for reproduction of, or that existing facilities are incapable for economic or practical reasons of reproducing, the edition that is the subject of the application for a licence under this Schedule, the reproduction may be made outside Barbados, if

- (a) the country where the work of reproduction is done is party to the Berne Convention or to the Universal Copyright Convention;
- (b) all copies reproduced are sent to the licensee in one or more bulk shipments for distribution exclusively in Barbados and the contract between the licensee and the establishment doing the work of reproduction so requires;
- (c) the contract provides that the establishment engaged for doing the work of reproduction guarantees that the work of reproduction is lawful in the country where it is done; and
- (d) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a licence has been granted under this Schedule.

(3) A licence issued under this Schedule in respect of a work must provide for such just compensation in favour of the owner of the right of reproduction in the work as is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in Barbados and owners of reproduction rights in the country of the owner of the right of reproduction.

(4) If the licensee is unable, by reason of currency regulations, to transmit the compensation to the owner of the right of reproduction, it is a condition of his licence that he report that fact to the Minister, who must make all efforts, by the use of international machinery, to ensure transmittal of that compensation in internationally convertible currency or its equivalent.

(5) As a condition of maintaining the validity of a licence to reproduce an edition of a work, the reproduction of that particular edition must be accurate and all published copies must include the following:

- (a) the title and name of the author of the work;
- (b) a notice in English stating that the copy is available for distribution only in Barbados; and
- (c) if the particular edition that is reproduced bore a copyright notice, a reprint of that notice.

(6) A licence for the reproduction of a particular edition of a work terminates if

- (a) copies of an edition of the work, in a printed or in an analogous form of reproduction are, by or with the authorisation of the owner of the right of reproduction, distributed in Barbados to the general public or in connection with systematic instructional activities and at a price reasonably related to that normally charged in Barbados for comparable works; and
- (b) that edition of the work is in English and substantially the same in content as the edition that was published under the licence.

(7) Any copies of the reproduction of a particular edition of a work already made before the licence therefor terminates under this section may continue to be distributed until the stock of copies is exhausted.

Audio-visual

5. (1) Subject to the like conditions as provided in this Schedule, the Minister may grant a licence

- (a) to reproduce in audio-visual form a lawfully made audio-visual work, including any protected works incorporated in it, if the audio-visual work was prepared and published for the sole purpose of being used in connection with systematic instructional activities; and
- (b) to translate into English any text incorporated in the audio-visual work described in [sub-paragraph \(a\)](#).

Application

6. (1) [Section 28](#) and this Schedule apply to works whose country of origin is the country, or any other country, whose name, with reference to this Schedule, is indicated in an order made by the Minister.

(2) The Minister may, by order, discontinue the application of [section 28](#) and this Schedule.