

Copyright and Related Rights Act, 2000***(No. 28 of 2000)**

TABLE OF CONTENTS

	<i>Section</i>
Part I:	
Preliminary and General	
Short title and commencement	1
Interpretation	2
Construction of reference to rights owner	3
Construction of reference to copy right	4
Encrypted broadcasts	5
Making and protection of broadcasts	6
Regulations and orders	7
Laying of regulations and orders	8
Expenses	9
Transitional provisions and repeals	10
Prosecution of offences	11
Offences by bodies corporate	12
Offences by members of partnership	13
Service of notices	14
Fees	15
Jurisdiction of Courts	16
Part II:	
Chapter 1:	Copyright
Subsistence of Copyright	
Copyright and copyright works	17
Copyright in literary, dramatic or musical works and original databases	18
Copyright in sound recordings	19
Exclusion of copyright in retransmission	20
Chapter 2:	Authorship and Ownership of Copyright
Interpretation of author	21
Works of joint authorship	22
First ownership of copyright	23
Chapter 3:	Duration of Copyright
Duration of copyright in a literary, dramatic, musical or artistic work or an original database	24
Duration of copyright in films	25
Duration of copyright in sound recordings	26
Duration of copyright in broadcasts	27
Duration of copyright in cable programmes	28
Duration of copyright in typographical arrangements	29
Duration of copyright in computer-generated works	30
Duration of copyright in works in volumes, parts, etc.	31
Miscellaneous matters in relation to duration	32
Expiry of copyright	33
Making available of a work not previously made available	34
Calculation of term of copyright	35
Non-application of certain provisions on duration to Government copyright, etc.	36
Chapter 4:	Rights of Copyright Owner
Acts restricted by copyright in a work	37
Playing of sound recordings — licences of right	38
Reproduction right	39

	Making available right	40
	Distribution right	41
	Rental and lending right	42
	Infringement by adaptation of works	43
Chapter 5:	Secondary Infringement of Copyright	
	Interpretation of infringing copy	44
	Secondary infringement: dealing with infringing copy	45
	Secondary infringement: providing means for making infringing copies	46
	Secondary infringement: permitting use of premises for infringing performances	47
	Secondary infringement: permitting use of apparatus for infringing performances	48
Chapter 6:	Acts Permitted in Relation to Works Protected by Copyright	
	Exemptions in respect of copyright works	49
	Fair dealing: research or private study	50
	Fair dealing: criticism or review	51
	Incidental inclusion of copyright material	52
	Education	
	Acts done for purposes of instruction or examination ..	53
	Anthologies for educational use	54
	Performing, playing or showing work in course of activities of educational establishment	55
	Recording by educational establishments of broadcasts and cable programmes	56
	Reprographic copying by educational establishments of certain works	57
	Copyright not infringed by lending	58
	Libraries and Archives	
	Regulations relating to copying by libraries and archives	59
	Libraries and archives: declarations	60
	Copying by librarians or archivists: articles in periodicals	61
	Copying by librarians or archivists: parts of works lawfully made available to public	62
	Multiple copying	63
	Copying by librarians or archivists: supply of copies to other libraries and archives	64
	Copying by librarians or archivists: replacement copies of works	65
	Copying by librarians or archivists for certain purposes	66
	Copying by librarians or archivists: certain works not lawfully made available to public	67
	Copy of work required to be made as condition of export	68
	Copying by librarians or archivists: exemptions	69
	Copying by librarians or archivists: infringing copy	70
	Public Administration	
	Parliamentary and judicial proceedings	71
	Statutory inquiries	72
	Copying of material in public records	73
	Material open to public inspection or on statutory register	74
	Works communicated to Government or Oireachtas	75
	Acts done under statutory authority	76
	Savings	77

Designs	
Acts done in reliance on registration of design	78
Exception from protection of copyright in certain works	79
Computer Programs	
Back-up copies of computer programs	80
Lawful copies of computer programs	81
Exceptions to infringement of copyright in computer programs	82
Original Database	
Access to or use of original database.	83
Typefaces	
Use of typefaces: printing	84
Articles for producing materials in particular typefaces	85
Works in Electronic Form	
Transfer of copies of work in electronic form	86
Miscellaneous Matters Relating to Copyright	
Transient and incidental copies	87
Anonymous or pseudonymous works: acts permitted ..	88
Use of notes or recordings of spoken words in certain cases	89
Public reading or recitation of works	90
Abstracts of scientific or technical articles	91
Fixations of performances of works of folklore	92
Representation of certain artistic works on public display	93
Advertising sale of artistic work	94
Making of subsequent works by same artist	95
Reconstruction of buildings	96
Playing or showing of sound recordings, broadcasts and cable programmes in certain premises	97
Playing of sound recordings for clubs, societies, etc. ...	98
Copying for purpose of broadcast or cable programme	99
Recording for purposes of supervision and control of broadcasts and cable programmes	100
Recording for purposes of time-shifting	101
Photographs of television broadcasts or cable programmes	102
Reception and retransmission of broadcasts in cable programmes services	103
Provision of modified works	104
Recording for archival purposes	105
Adaptation of a work	106
Chapter 7: Copyright: Moral Rights	
Paternity right	107
Exception to paternity right	108
Integrity right	109
Exception to integrity right	110
Qualification of integrity right in certain cases	111
Secondary infringement of integrity right: possessing or dealing	112
False attribution of work	113
Right to privacy in photographs and films	114
Duration of moral rights	115
Waiver of rights	116

	Application of certain provisions to works of joint authorship and joint ownership	117
	Moral rights not assignable or alienable	118
	Transmission of moral rights on death	119
Chapter 8:	Dealings with Rights in Copyright Works	
	Assignment and licences	120
	Prospective ownership of copyright	121
	Exclusive licences	122
	Copyright to pass under will with certain original fixations	123
	Presumption of transfer of rental right in case of film production agreement	124
	Right to equitable remuneration where rental right transferred	125
	Equitable remuneration: reference of determination of amount to Controller	126
Chapter 9:	Remedies: Copyright Owner	
	Infringement actionable by copyright owner	127
	Award of damages in infringement action	128
	Action in respect of construction of building	129
	Undertakings concerning licences of right	130
	Order for delivery up	131
	Application to District Court for seizure of infringing copies, articles or devices	132
	Right of copyright owner to seize infringing copies, articles or devices, etc.	133
	Rights of owner of copyright in respect of infringing copy	134
Chapter 10:	Rights and Remedies: Exclusive Licensee	
	Rights and remedies of exclusive licensee	135
	Exercise of concurrent rights	136
Chapter 11:	Remedies: Moral Rights	
	Remedies for infringement of moral rights	137
	Action in respect of construction of building	138
Chapter 12:	Presumptions	
	Presumptions.	139
Chapter 13:	Offences: Copyright	
	Offences	140
	False claims of copyright.	141
	Order for delivery up in criminal proceedings	142
	Search warrants and seizure	143
Chapter 14:	Delivery up and Disposal	
	Period after which remedy for delivery up is not available	144
	Order as to disposal of infringing copy, article or device	145
	Amendment to section 23 of Trade Marks Act, 1996 ...	146
Chapter 15:	Provision for Preventing Importation	
	Infringing copies, articles or devices may be treated as prohibited goods	147
	Power of Revenue Commissioner to make regulations	148
Chapter 16:	Copyright Licensing	
	Licensing schemes and licensing bodies	149
	References and Applications Relating to Licensing Schemes	
	General references	150
	Reference of proposed licensing scheme to Controller ..	151
	Reference of licensing scheme to Controller	152
	Further reference of scheme to Controller	153
	Application for grant of licence in connection with licensing scheme	154

	Review of orders made by Controller	155
	Effect of order of Controller as to licensing scheme	156
	References and Applications Relating to Licensing by Licensing Bodies	
	General references by licensing bodies	157
	Reference to Controller of proposed licence	158
	Reference to Controller of expiring licence	159
	Application for review of order made by Controller	160
	Effect of order of Controller as to licence	161
	Licensing: Miscellaneous	
	General considerations: unreasonable discrimination ...	162
	Licences for reprographic copying	163
	Licences to reflect payments in respect of underlying rights	164
	Licences to reflect conditions imposed by promoters of events	165
	Licences in respect of works included in retransmissions	166
	Implied indemnity in certain schemes and licences for reprographic copying	167
	Power to extend application of scheme or licence	168
	Variation or discharge of order extending scheme or licence	169
	Appeals against orders	170
	Inquiry whether other provisions required	171
	Statutory licence where recommendation not implemented	172
	Certification of licensing schemes	173
	Cable Retransmissions	
	Collective exercise of certain rights in relation to cable retransmissions	174
Chapter 17:	Registration of Copyright Licensing Bodies	
	Register of copyright licensing bodies	175
	Proof that licensing body may act on behalf of specified classes	176
	Notification of charges	177
	Validity of certificates of registration	178
	Refusal of application	179
	Indemnity for Controller	180
	Obligation of collecting societies to register (copyright)	181
Chapter 18:	Qualification for Copyright Protection	
	Qualification for copyright protection: general	182
	Qualification by reference to author	183
	Qualification for copyright protection: specific	184
	Territorial waters and Continental Shelf	185
	Qualification for copyright in broadcasts and cable programmes	186
	Prohibition on contravention of certain international obligations	187
	Extension of this Part by order	188
	Orders to be made for countries other than convention countries, etc.	189
	Restriction of rights by order	190
Chapter 19:	Government and Oireachtas Copyright	
	Government copyright	191
	Copyright in Acts, etc.	192
	Houses of the Oireachtas: copyright.	193
	Oireachtas copyright	194

	Houses of the Oireachtas: supplementary provisions with regard to copyright	195
Chapter20:	International Organisations Copyright vesting in certain international organisations.....	196
Chapter21:	Anonymous Works Works of folklore	197
Chapter22:	Deposit of Certain Copyright Materials Delivery of certain materials to libraries	198
Chapter23:	Amendment of National Cultural Institutions Act, 1997, and Miscellaneous Repeals Amendment of sections 65 and 66 of the National Cultural Institutions Act, 1997	199
Chapter24:	Copyright: Legal Tender Copyright in Irish legal tender notes, euro notes, consolidated bank notes and in Irish and euro coins	200
Chapter25:	Disposal of Certain Books Disposal of books of King's Inns Library, Dublin	201
Part III:	Rights in Performances	
Chapter 1:	Performers' Rights Interpretation	202
	Performers' rights: general	203
	Reproduction right of performer	204
	Making available to public copies of recordings of qualifying performances	205
	Distribution right of performers	206
	Rental and lending right of performer	207
	Right to equitable remuneration for exploitation of sound recording	208
Chapter 2 :	Infringement of Performers' Rights Consent required for recording or live transmission of performance.....	209
	Meaning of illicit recording	210
	Presumptions	211
	Secondary infringement: importing, possessing or dealing with illicit recordings	212
	Secondary infringement: providing means for making illicit recording	213
	Secondary infringement: permitting use of apparatus for infringing performances	214
Chapter 3:	Recording Rights Interpretation	215
	Infringement of recording rights by copying	216
	Infringement of recording rights by use of illicit recording.....	217
	Secondary infringement: importing, possessing or dealing with illicit recording	218
	Secondary infringement: providing means for making illicit recordings	219
Chapter 4:	Acts Permitted in Relation to Performances Exemptions in respect of performance	220
	Fair dealing with performances, etc.	221
	Incidental use of performances	222
	Education	
	Copying of a performance for purpose of instruction, etc.	223
	Playing of sound recording, etc., at an educational establishment.....	224
	Recording of broadcast, etc., on behalf of an educational establishment	225

	Performer's rights not infringed by lending	226
	Libraries and Archives	
	Regulations relating to copying of recordings by libraries and archives	227
	Libraries and archives: declarations	228
	Copying by librarians or archivists: parts of recordings lawfully made available to public	229
	Multiple copying	230
	Copying by librarians or archivists: supply of copies to other libraries and archives	231
	Copying by librarians or archivists: replacement copies of recordings of performances	232
	Copying by librarians or archivists for certain purposes	233
	Copying by librarians or archivists: certain recordings not lawfully made available to public	234
	Copy of recording required to be made as condition of export	235
	Copying by librarians or archivists: illicit recording	236
	Public Administration	
	Parliamentary and judicial proceedings	237
	Statutory inquiries	238
	Copying of material in public records	239
	Material open to public inspection or on statutory register	240
	Acts done under statutory authority	241
	Recordings in Electronic Form	
	Transfer of copies of recordings in electronic form	242
	Miscellaneous Matters Relating to Performers' Rights	
	Use of recordings of spoken words in certain cases	243
	Transient and incidental copies	244
	Recordings of works of folklore	245
	Playing or showing sound recordings, broadcasts and cable programmes in certain premises	246
	Playing of sound recordings for clubs, societies, etc. ...	247
	Recording for purposes of broadcast or cable programme	248
	Recording for purposes of supervision and control of broadcasts and cable programmes	249
	Recording for purposes of time —shifting	250
	Reception and retransmission of broadcast in cable programmes service	251
	Provision of modified recordings	252
	Recording for archival purposes	253
	Power of Controller to consent on behalf of performer	254
Chapter 5:	Delivery Up and Seizure	
	Order for delivery up	255
	Application to District Court for seizure of illicit recordings, articles or devices, etc.	256
	Right of right owner to seize illicit recordings, articles or devices, etc.	257
Chapter 6:	Offences: Performances	
	Offences	258
	False claim of rights in performances	259
	Order for delivery up in criminal proceedings	260
	Search warrants and seizure	261
	False representation of authority to give consent	262

	Period after which remedy of delivery up is not available	263
	Order as to disposal of illicit recording, article or device	264
Chapter7:	Licensing Schemes: Performers' Property Rights Licensing	
	Licensingschemesandlicensingbodies	265
	References and Applications Relating to Licensing Schemes	
	Generalreferences	266
	ReferenceofproposedlicensingschemetoController ..	267
	ReferenceoflicensingschemetoController	268
	Furtherreference ofschemeController	269
	Application for grant of a licence in connection with licensingscheme	270
	ReviewofordersmadebyController	271
	EffectoforderofControllerastolicensingscheme	272
	References and Applications Relating to Licensing by Licensing Bodies	
	Generalreferencesbylicensingbodies	273
	ReferencetoControllerofproposedlicence	274
	ReferencetoControllerofexpiringlicence	275
	ApplicationforreviewofordermadebyController	276
	EffectoforderofController astolice	277
	Licensing:Miscellaneous	
	Generalconsiderations:unreasonablediscrimination ...	278
	Licences to reflect payments in respect of underlying rights.....	279
Chapter8:	Registration of Licensing Bodies in Respect of Performers' Property Rights	
	Register of licensing bodies for performers' property rights.....	280
	Proof that licensing body may act on behalf of specifiedclasses	281
	Notificationofcharges	282
	Validityofcertificatesofregistration	283
	Refusalofapplication	284
	IndemnityforController	285
	Obligation of collecting societies to register (performers' property rights)	286
Chapter9:	Qualification:Performances	
	Definitionofqualifyingperson	287
	Qualifyingperformance	288
	Designationofqualifyingcountries	289
	TerritorialwatersandContinentalShelf	290
Chapter10:	DurationofRightsinPerformances	
	Durationofrights	291
Chapter11:	Performers' Property Rights	
	Performers' property rights	292
Chapter12:	Transmission of Performers' Property Rights	
	Assignmentandlicences	293
	Prospectiveownershipofperformers' propertyrights ..	294
	Exclusivelicences	295
	Performers' property rights to pass under will with certainoriginalrecordings	296
	Presumption of transfer of rental right in case of film productionagreement	297
	Right to equitable remuneration where rental right is transferred.....	298

	Equitable remuneration: reference of determination of amount to Controller	299
Chapter 13:	Transmission of Recording Rights and Performers' Non-Property Rights	
	Performers' non-property rights	300
	Transmissibility of rights of person having recording rights	301
	Consent	302
Chapter 14:	Remedies: Owner of Performers' Property Rights	
	Infringement actionable by rights owner	303
	Award of damages in infringement action	304
	Undertakings concerning licences of right	305
Chapter 15:	Rights and Remedies: Exclusive Licensee	
	Rights and remedies of exclusive licensee	306
	Exercise of concurrent rights	307
Chapter 16:	Remedies: Owner of Performers' Non-Property Rights and Person Having Recording Rights	
	Infringement actionable as a breach of statutory duty ..	308
Part IV:	Performers' Moral Rights	
	Paternity right	309
	Exception to paternity right	310
	Integrity right	311
	Exception to integrity right	312
	Secondary infringement of integrity right: possessing or dealing	313
	False attribution of performances	314
	Duration of moral rights	315
	Waiver of rights	316
	Performers' moral rights not assignable or alienable	317
	Transmission of moral rights on death	318
	Remedies for infringement of moral rights	319
Part V:	Databases	
Chapter 1:	Rights in Databases	
	Interpretation	320
Chapter 2:	Subsistence of Database Right	
	Database right	321
Chapter 3:	Maker and Ownership: Databases	
	Maker of data base	322
	First ownership of database right	323
Chapter 4:	Restricted Acts: Databases	
	Acts restricted by database right	324
Chapter 5:	Duration of Database Right	
	Term of protection of database right	325
Chapter 6:	Qualification: Databases	
	Qualification for database right	326
Chapter 7:	Rights and Obligations of Lawful Users	
	Avoidance of certain terms affecting lawful users	327
Chapter 8:	Acts Permitted in Respect of Database Right	
	Exemptions in respect of databases	328
	Fair dealing: research or private study	329
	Education	
	Exception for educational establishments	330
	Public Administration	
	Parliamentary or judicial proceedings	331
	Statutory inquiries	332
	Copying of material in public records	333
	Material open to public inspection or on statutory register	334

	Databases communicated to Government or Oireachtas	335
	Acts done under statutory authority	336
	Anonymous or Pseudonymous Databases	
	Anonymous or pseudonymous databases: acts permitted.....	337
Chapter 9:	Application of Copyright Provision to Database Right	
	Application of copyright provision to database right ..	338
Chapter 10:	Presumptions	
	Presumptions relevant to database right	339
Chapter 11:	Database Right: Licensing	
	Licensing schemes and licensing bodies	340
	References and Applications Relating to Licensing Schemes	
	General references	341
	Reference of proposed licensing scheme to Controller ..	342
	Reference of licensing scheme to Controller	343
	Further reference of scheme to Controller	344
	Application for grant of licence in connection with licensing scheme	345
	Review of orders made by Controller	346
	Effect of order of Controller as to licensing scheme	347
	References and Applications Relating to Licensing by Licensing Bodies	
	General reference by licensing bodies	348
	Reference to Controller of proposed licence	349
	Reference to Controller of expiring licence	350
	Application for review of order made by Controller	351
	Effect of order of Controller as to licence	352
	Licensing: Miscellaneous	
	General considerations: unreasonable discrimination ...	353
	Licences to reflect payments in respect of underlying rights.....	354
Chapter 12:	Registration of Licensing Bodies in Respect of Database Right	
	Register of licensing bodies for database right	355
	Proof that licensing body may act on behalf of specified classes	356
	Notification of charges	357
	Validity of certificates of registration	358
	Refusal of application	359
	Indemnity for Controller	360
	Obligation of collecting societies to register (database rights)	361
Part VI:	Jurisdiction of Controller	
	Jurisdiction of Controller	362
	Rules in relation to proceedings before Controller	363
	Power of Controller to award costs	364
	Appointment of assessors	365
	Appeal to the High Court	366
	References of dispute to arbitrator	367
	Controller may consult Attorney General	368
	Definition of dispute for the purposes of this Chapter ..	369
Part VII:	Technological Protection Measures	
Chapter 1:	Rights Protection Measures	
	Devices designed to circumvent protection	370

	Offence of unlawful reception	371
	Rights in respect of apparatus, etc., for unauthorised reception of transmissions	372
	Denial of protection	373
	Non-interference of rights protection measures with permitted acts	374
Chapter 2:	Rights Management Information	
	Rights and remedies in respect of unlawful acts which interfere with rights management information	375
	Removal or interference with rights management information	376
SCHEDULES		
		<i>Paragraphs</i>
First schedule		
Part I:	Transitional provisions and savings: copyright	1-16
Part II:	Works made before the first day of July, 1912	17-30
Part III:	Secondary infringements	31
Part IV:	Performers' rights	32-36
Part V:	Copyright and performers' rights	37-44
Part VI:	Transitional provisions and savings: databases	45-46
Second schedule		
Part I		
Part II		
Third schedule		
	(Untitled)	1
	Qualifications on application	2
ACTS REFERRED TO**		

An Act to make provision in respect of copyright, protection of rights of performer and rights in performances, to make provision for licensing schemes and registration schemes for copyright and related rights; to restate the law in respect of Council Directive No. 91/250/EEC of 14 May 1991¹ on the Legal Protection of Computer Programs; to give effect to Council Directive No. 92/100/EEC of 19 November 1992² on Rental Right and Lending Right and on Certain Rights Relating to Copyright in the Field of Intellectual Property; to give effect to Council Directive No. 93/83/EEC of 27 September 1993³ on the Coordination of Certain Rules Concerning Copyright and Rights Related to Copyright Applicable to Satellite Broadcasting and Cable Retransmission; to restate the law in respect of Council Directive No. 93/98/EEC of 29 October 1993⁴ Harmonising the Term of Protection of Copyright and Certain Related Rights and to give effect to Article 2.1 thereof; to give effect to Directive No. 96/9/EC of the European Parliament and of the Council of 11 March 1996⁵ on the Legal Protection of Databases; and to provide for related matters. [10th July, 2000]

PART I
PRELIMINARY AND GENERAL

Short title and commencement

1.—(1) This Act may be cited as the Copyright and Related Rights Act, 2000.

(2) This Act shall come into operation on such day or days as the Minister may by order or order se either generally or with reference to any particular purpose appoint, and different days may be so appointed for different purposes or different provisions of this Act.

(3) An order under subsection (2) may, in respect of the repeal or revocation effected by section 10 of the enactments mentioned in the Second Schedule, fix different days for the repeal or revocation of different enactments or for the repeal or revocation for different purposes of any enactment.

Interpretation

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

“Act of 1927” means the Industrial and Commercial Property (Protection) Act, 1927;

“anonymous work” means a work where the identity of the author is unknown or, in the case of a work of joint authorship, where the identity of the authors is unknown;

“appropriate court” means —

(a) the District Court, where the damages or the value of the other relief sought in any action to which the application relates is not liable to exceed such sum as stands specified by an enactment to be the jurisdiction of the District Court for actions in contract or tort,

(b) the Circuit Court, where the damages or the value of the other relief sought in any action to which the application relates is not liable to exceed such sum as stands specified by an enactment to be the jurisdiction of the Circuit Court for actions in contract or tort, and

(c) in any other case, the High Court;

“artistic work” includes a work of any of the following descriptions, irrespective of their artistic quality —

(a) photographs, paintings, drawings, diagrams, maps, charts, plans, engravings, etchings, lithographs, woodcuts, prints or similar works, collages or sculptures (including any cast or model made for the purposes of a sculpture),

(b) works of architecture, being either buildings or models for buildings, and

(c) works of artistic craftsmanship;

“author” has the meaning assigned to it by section 21;

“authorised broadcaster” means Radio Telefís Éireann, Seirbhísí Theilifís na Gaeilge Teoranta or a person with whom the Independent Radio and Television Commission has entered into a contract for the provision of broadcasting services under the Radio and Television Act, 1988, and is licensed under that Act to provide those services;

“authorised cable programme service provider” means the provider of any cable programme service other than a cable programme service provided unlawfully;

“broadcast” means a transmission by wireless means, including by terrestrial or satellite means, for direct public reception or for presentation to members of the public of sounds, images or data or any combination of sounds, images or data, or the representation thereof, but does not include MMDS service;

“building” includes any structure;

“cable programme” means any item included in a cable programme service;

“cable programme service” means a service, including MMDS, which consists wholly or mainly of sending sounds, images or data or any combination of sounds, images or data, or the representation thereof, by means of a telecommunication system —

(a) for reception at 2 or more places (whether for simultaneous reception or at different times in response to requests by different users), or

(b) for presentation to members of the public,

but shall not include:

(i) a service or part of a service of which it is an essential feature that while sounds, images or data or any combination of sounds, images or data, or the representations thereof, are being conveyed by the person providing the service, there may be sent from each place of reception, by means of the same system or, as the case may be, the same part of it, data (other than signals sent for the operation or control of the service) for reception by the person providing the service or other persons receiving the service;

(ii) a service operated for the purposes of a business, trade or profession where —

(I) no person except that person carrying on the business, trade or profession is concerned in the control of the apparatus comprised in the system,

(II) sounds, images or data or any combination of sounds, images or data, or the representation thereof, are conveyed by the system exclusively for the purposes of the internal management of that business, trade or profession and not for the purpose of rendering a service or providing amenities for others, and

(III) the system is not connected to any other telecommunication system;

(iii) a service operated by an individual where —

(I) all the apparatus comprised in the system is under his or her control,

(II) sounds, images or data or any combination of sounds, images or data, or the representation thereof, conveyed by the system are conveyed solely for his or her private and domestic use by that individual, and

(III) the system is not connected to any other telecommunication system;

(iv) services, other than services operated as part of the amenities provided for residents or occupants of premises operated as a business, trade or profession, where —

(I) all the apparatus comprised in the system is situated in, or connects, premises which are in single occupation, and

(II) the system is not connected to any other telecommunication system;

(v) services which are, or to the extent that they are, operated for persons providing broadcasting or cable programme services or providing programmes for such services;

“computer-generated”, in relation to a work, means that the work is generated by computer in circumstances where the author of the work is not an individual;

“computer program” means a program which is original in that it is the author’s own intellectual creation and includes any design materials used for the preparation of the program;

“Controller” means the Controller of Patents, Designs and Trade Marks;

“copyright work” means a work in which copyright subsists;

“database” means a collection of independent works, data or other materials, arranged in a systematic or methodical way and individually accessible by any means but excludes computer programs used in the making or operation of a database;

“disability” has the same meaning as in section 48 of the Statute of Limitations, 1957;

“dramatic work” includes a choreographic work or a work of mime;

“educational establishment” means —

(a) any school,

(b) any university to which the Universities Act, 1997, applies, and

(c) any other educational establishment prescribed by the Minister under section 55;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocols signed at Brussels on 17 March 1993 and as amended from time to time;

“enactment” means an Act of the Oireachtas [Parliament] or an instrument made thereunder;

“film” means a fixation on any medium from which a moving image may, by any means, be produced, perceived or communicated through a device;

“fixation” means the embodiment of sounds or images or any combination of sounds or images, or the representation thereof, from which they can be perceived, reproduced or communicated through a device;

“general licence” means a licence granted by a licensing body that includes all works of the description to which it applies;

“judicial proceeding” includes proceedings before any court or tribunal which has power to hear, receive and examine evidence on oath or otherwise and has authority to decide any matter affecting the legal rights or liabilities of a person;

“licensing body” means a body referred to in section 38, 149, 265 or 340, as the case may be;

“literary work” means a work, including a computer program, but does not include a dramatic or musical work or an original database, which is written, spoken or sung;

“marketed” means sold, hired, rented or lent, or offered or exposed for sale, hire, rental or loan, or otherwise distributed, and references to “marketing” shall be construed accordingly;

“Member State of the EEA” means a state which is a contracting state to the EEA Agreement;

“Minister” means the Minister for Enterprise, Trade and Employment;

“MMDS” means a Multipoint Microwave Distribution System;

“musical work” means a work consisting of music, but does not include any words, or action, intended to be sung, spoken or performed with the music;

“original database” means a database in any form which by reason of the selection or arrangement of its contents constitutes the original intellectual creation of the author;

“parliamentary proceeding” includes proceedings of either or both of the Houses of the Oireachtas or committees established by either or both of the Houses of the Oireachtas or proceedings of the European Parliament or committees established by the European Parliament;

“photograph” means a recording of light, or any 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;

“premises” means any building or place, including any land, vehicle, vessel, moveable structure, trailer, hovercraft or aircraft;

“prescribe” means prescribe by regulations and cognate words shall be construed accordingly;

“producer”, in relation to a film or sound recording, means the person by whom the arrangements necessary for the making of the film or sound recording, as the case may be, are undertaken;

“protection-defeating device” includes any device, function or product, or component incorporated into a device, function or product, the primary purpose or effect of which is to avoid, bypass, remove, deactivate or otherwise circumvent, without authority, any rights protection measure;

“pseudonymous work” means a work where the pseudonym adopted by the author or, in the case of a work of joint authorship the authors, does not reveal the identity of the author or authors and the identity of the author or authors is unknown;

“published edition”, in relation to the 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 or original databases;

“repeat broadcast” means a repeat of a broadcast which has been previously transmitted;

“repeat cable programme” means a repeat of a cable programme which has been previously included in a cable programme service;

“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;

“rights protection measure” means any process, treatment, mechanism or system which is designed to prevent or inhibit the unauthorised exercise of any of the rights conferred by this Act;

“sound recording” means a fixation of sounds, or of the representations thereof, from which the sounds are capable of being reproduced, regardless of the medium on which the recording is made, or the method by which the sounds are reproduced;

“statutory inquiry” means an inquiry held, or investigation conducted, pursuant to a duty imposed or power conferred by an enactment;

“statutory register” means a register maintained pursuant to a statutory requirement;

“statutory requirement” means a requirement imposed by an enactment;

“sufficient acknowledgement” has the meaning assigned to it by section 51;

“telecommunications system” means a system for conveying sounds, data or information or any combination of sounds, images or information, or the representations thereof, by means of a wire, beam or any other conducting device through which electronically generated programme-carrying signals are guided over a distance;

“work” means a literary, dramatic, musical or artistic work, sound recording, film, broadcast, cable programme, typographical arrangement of a published edition or an original database and includes a computer program except in Part II, Chapter 7 where “work” means “literary, dramatic, musical or artistic work or film”;

“work of joint authorship” has the meaning assigned to it by section 22;

“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 references to “written” shall be construed accordingly.

(2) A reference in this Act to the reception of a broadcast shall include the reception of a broadcast relayed by means of a telecommunication system.

(3) A reference in this Act to a prescribed archive shall include references to a prescribed museum.

(4) A reference in this Act to an archive shall include references to a museum and a reference in this Act to an archivist shall include reference to a curator.

(5) A reference in this Act to a librarian or archivist shall include reference to a person acting on his or her behalf.

(6) A computer program used in the making or operation of databases shall not be regarded as a database.

(7) The author of a work shall be deemed to be known where it is possible for a person, without previous knowledge of the facts, to ascertain the identity of the author of the work by reasonable enquiry.

(8) The authors of a work of joint authorship shall be deemed to be known where it is possible for a person, without previous knowledge of the facts, to ascertain the identity of one or more of the authors of the work by reasonable enquiry.

(9) References in this Act to a permanent collection shall include a collection of works or sound recordings in the possession of a library or archive that have been loaned to that library or archive for an indefinite period.

(10) Where an act which would otherwise infringe any of the rights conferred by this Act is permitted under this Act it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict that act.

(11) A reference in this Act to the copyright owner or the rights owner shall include a reference to a person designated by the copyright owner or the rights owner to act on his or her behalf in infringement proceedings.

(12)(a) A reference in this Act to a Part, Chapter, Division, section or Schedule is a reference to a Part, Chapter, Division or section of, or Schedule to, this Act unless it is indicated that a reference to some other Act is intended.

(b) A reference in this Act to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that a reference to some other provision is intended.

(c) A reference in this Act to any other enactment shall, except where the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment including this Act.

Construction of reference to rights owner

3.—(1) In the case of a right conferred by this Act to which different persons are entitled (whether in consequence of a partial assignment of such right or otherwise) in respect of the application of the right—

- (a) to undertake different acts or classes of acts restricted by that right, or
- (b) to undertake one or more acts or classes of acts restricted by that right in different countries, territories, states or areas, or at different times,

the rights owner shall be deemed to be the person who is entitled to the right in respect of its application to the undertaking of the act or class of acts restricted by the right, or, as the case may be, to the undertaking of the act or class of acts restricted by the right in the particular country, territory, state or area or at the particular time, which is relevant to the purpose concerned.

(2) In relation to a future right to which different persons are prospectively entitled, references in this Act to the prospective owners shall be construed accordingly.

(3) Where a right conferred by this Act (or any aspect of such right) is owned by more than one person jointly, references in this Act to the rights owner are to all the owners, and any requirement of the licence of the rights owner requires the licence of all of the owners.

Construction of reference to copyright

4.—(1) References in this Act to copyright shall include references to copyright under any previous enactment conferring copyright.

(2) References in the Act of 1927 to Part VI or VII of that Act shall be deemed to include reference to this Act.

Encrypted broadcasts

5. A broadcast that is encrypted shall be regarded as being broadcast for lawful direct public reception where the means required for decoding the signals for those broadcasts have been made available by, or with the authority of, the person making the broadcast.

Making and protection of broadcasts

6.—(1) Subject to subsection (3), a reference in this Act to the person making a broadcast, broadcasting a work, or including a work in a broadcast shall be construed as a reference—

- (a) to the person transmitting the programme, where he or she has responsibility to any extent for its contents, and
- (b) to any person providing the programme whom he or she makes the arrangements necessary for its transmission with the person transmitting that programme,

and references to a programme, in the context of broadcasting, shall be construed as references to any item included in the broadcast.

(2) Subject to subsection (3), the place from which a 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.

(3) Where the place from which a broadcast by way of satellite transmission is made is located in a country, territory, state or area other than a Member State of the EEA and the law of that country, territory, state or area fails to provide, at least, the following level of protection:

- (a) exclusive rights in relation to broadcasting equivalent to those conferred by section 37;
- (b) a right in relation to live broadcasting equivalent to that conferred on a performer by section 204; and
- (c) a right for authors of sound recordings and performers to share in a single equitable remuneration in respect of the broadcasting of sound recordings,

then, the following provisions shall apply:

- (i) where the place from which the programme-carrying signals are retransmitted to the satellite (in this Act that place is referred to as the “uplink station”) is located in a Member State of the EEA —
 - (I) that uplink station shall be treated as the place from which the broadcast is made, and
 - (II) the person operating the uplink station shall be treated as the person making the broadcast;
- or
- (ii) where the uplink station is not located in a Member State of the EEA but a person who is established in a Member State of the EEA has commissioned the making of the broadcast —
 - (I) the place in which that person has his or her principal establishment in a Member State of the EEA shall be treated as the place from which the broadcast is made, and
 - (II) that person shall be treated as the person making the broadcast.

Regulations and orders

7.—(1) The Minister may make regulations for the purpose of enabling this Act to have full effect.

(2) Regulations made under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of this Act.

(3) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed.

(4) The Government or Minister, as the case may be, may by order amend or revoke an order made by the Government or the Minister under this Act including an order made under this subsection (other than an order made under section 1(2)).

Laying of regulations and orders

8. Every order (other than an order made under section 1(2)) or regulation made by the Minister or the Minister for Finance under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses

9. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Transitional provisions and repeals

10.—(1) The First Schedule shall have effect with respect to transitional matters.

(2) The Acts mentioned in column (2) of Part I of the Second Schedule are hereby repealed to the extent mentioned in column (3) of that Schedule.

(3) The statutory instruments mentioned in column (2) of Part II of the Second Schedule are hereby revoked to the extent mentioned in column (3) of that Schedule.

Prosecution of offences

11.—(1) Summary proceedings for an offence under this Act may be brought and prosecuted by the Minister.

(2) Notwithstanding the provisions of section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be commenced at any time within 12 months from the date on which the offence was committed.

Offences by bodies corporate

12. Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of _____ or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or any other person who was acting or purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first _____ -mentioned offence.

Offences by members of partnership

13.—(1) Without prejudice to any liability of a partner under subsection (3 _____), where an offence under this Act is committed by a partnership any proceedings shall be brought against the partnership in the name of the partnership and not in the name of the individual partner.

(2) A fine imposed on a partnership on its conviction _____ in proceedings brought under subsection (1) shall be paid out of the assets of the partnership.

(3) Where a partnership is guilty of an offence under this Act, every partner, other than a partner who is proved to have been ignorant of or to have attempted _____ ed to prevent commission of the offence, shall also be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Service of notices

14.—(1) A notice required to be served or given under this Act shall, subject to subsection (2), be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways _____ —

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in _____ n which an address for service has been furnished, at that address,
- (c) by sending it by post in a prepaid letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address,
- (d) by sending it by such other method (including electronic method) as the Minister may decide,
- (e) where the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and notice is required to be served on, or given to, him _____ or her in respect of any premises, by delivering it to a person over the age of 16 years of age resident in or employed at the premises or by affixing it in a conspicuous position on or near the premises.

(2) Where a notice under this Act is to be served on or given to a person who is the owner or occupier of any premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words “the owner” or, as the case may require, “the occupier”.

(3) For the purposes of this section, a company within the meaning of the Companies Acts, 1963 to 1999, shall be deemed to be ordinarily resident at its registered office, and every other body corporate, unincorporated body or person, including a partnership shall be deemed to be ordinarily resident at its principal office or place of business.

(4) A person shall not at any time during the period of 3 months after a notice is affixed under subsection (1) (e) remove, alter, damage or deface the notice without lawful authority.

(5) A person who contravenes subsection (4) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.

Fees

15. The Public Offices Fees Act, 1879, shall not apply in respect of any fees payable under this Act.

Jurisdiction of Courts

16. An appeal lies from the making of an order under this Act —

- (a) from the District Court to the Circuit Court, where the order is made by the District Court,
- (b) from the Circuit Court to the High Court, where the order is made by the Circuit Court,
- (c) from the Central Criminal Court to the Court of Criminal Appeal, where the order is made by the Central Criminal Court.

PART II COPYRIGHT

Chapter 1 Subsistence of Copyright

Copyright and copyright works

17.—(1) Copyright is a property right whereby, subject to this Act, the owner of the copyright in any work may undertake or authorise other persons in relation to that work to undertake certain acts in the State, being acts which are designated by this Act as acts restricted by copyright in a work of that description.

(2) Copyright subsists, in accordance with this Act, in —

- (a) original literary, dramatic, musical or artistic works,
- (b) sound recordings, films, broadcasts or cable programmes,
- (c) the typographical arrangement of published editions, and
- (d) original databases.

(3) Copyright protection shall not extend to the ideas and principles which underlie any element of a work, procedures, methods of operation or mathematical concepts and, in respect of original databases, shall not extend to their contents and is without prejudice to any rights subsisting in those contents.

(4) Copyright shall not subsist in a work unless the requirements for copyright protection specified in this Part with respect to qualification are complied with.

(5) Copyright shall not subsist in a work which infringes, or to the extent that it infringes, the copyright in another work.

(6) Copyright shall not subsist in a work which is, or to the extent that it is, a copy taken from a work which has been previously made available to the public.

*Copyright in literary, dramatic
or musical works and original databases*

18.—(1) Copyright shall not subsist in a literary, dramatic or musical work or an original database until that work is recorded in writing or otherwise by or with the consent of the author.

(2) References in this Part to the time at which, or the period during which, a work referred to in subsection (1) is made are to the time at which, or the period during which, that work is so recorded.

(3) Copyright may subsist in a work that is recorded and may subsist in the recording of a work.

Copyright in sound recordings

19. Copyright shall not subsist in a sound recording until the first fixation of the sound recording is made.

Exclusion of copyright in retransmission

20.—(1) Subject to subsection (2), copyright shall not subsist in the transmission of a broadcast or other material in a cable programme service unless the transmission alters the content of the broadcast or other materials.

(2) Nothing in subsection (1) shall affect the copyright subsisting in the broadcast or other material arising other than by virtue of the transmission.

Chapter 2 Authorship and Ownership of Copyright

Interpretation of author

21. In this Act, “author” means the person who creates a work and includes:

- (a) in the case of a sound recording, the producer;
- (b) in the case of a film, the producer and the principal director;
- (c) in the case of a broadcast, the person making the broadcast or in the case of a broadcast which relays another broadcast by reception and immediate retransmission, without alteration, the person making that other broadcast;
- (d) in the case of a cable programme, the person providing the cable programme service in which the programme is included;
- (e) in the case of a typographical arrangement of a published edition, the publisher;
- (f) in the case of a work which is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken;
- (g) in the case of an original database, the individual or group of individuals who made the database; and
- (h) in the case of a photograph, the photographer.

Works of joint authorship

22.—(1) In this Act, “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.

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

(3) A broadcast shall be treated as a work of joint authorship if more than one person makes the broadcast and the contribution of each person is not distinct from that of any of the others involved in making that broadcast.

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

First ownership of copyright

23.—(1) The author of a work shall be the first owner of the copyright unless —

- (a) the work is made by an employee in the course of employment, in which case the employer is the first owner of any copyright in the work, subject to any agreement to the contrary,
- (b) the work is the subject of Government or Oireachtas copyright,
- (c) the work is the subject of the copyright of a prescribed international organisation, or
- (d) the copyright in the work is conferred on some other person by an enactment.

(2) Where a work, other than a computer program, is made by an author in the course of employment by the proprietor of a newspaper or periodical, the author may use the work for any purpose, other than for the purposes of making available that work to newspapers or periodicals, without infringing the copyright in the work.

Chapter 3 **Duration of Copyright**

Duration of copyright in literary, dramatic, musical or artistic work or an original database

24.—(1) The copyright in a literary, dramatic, musical or artistic work, or an original database shall expire 70 years after the death of the author, irrespective of the date on which the work is first lawfully made available to the public.

(2) The copyright in a work specified in subsection (1) which is anonymous or pseudonymous shall expire 70 years after the date on which the work is first lawfully made available to the public.

(3) In respect of an anonymous or pseudonymous work referred to in subsection (2) —

- (a) where the pseudonym adopted by the author leaves no doubt as to his or her identity,
- (b) where the author discloses his or her identity, or
- (c) where his or her identity becomes known during the 70 years from the date on which the work is first lawfully made available to the public,

the copyright in that work shall expire 70 years after the death of that author.

Duration of copyright in films

25.—(1) Subject to subsection (2), the copyright in a film shall expire 70 years after the last of the following persons dies, namely:

- (a) the principal director of the film;
- (b) the author of the screenplay of the film;
- (c) the author of the dialogue of the film;
- (d) the author of music specifically composed for use in the film.

(2) Where a film is first lawfully made available to the public during the period of 70 years following the death of the last of the persons specified in subsection (1), the copyright in that film shall expire 70 years after the date of such making available.

(3) Where the copyright in a film has expired, a person who, after such expiration, makes available to the public the film or causes the film to be so made available shall not infringe the copyright in any work included in the film.

*Duration of copyright
in sound recordings*

26. The copyright in a sound recording shall expire —

- (a) 50 years after the sound recording is made, or
- (b) where it is first lawfully made available to the public during the period specified in paragraph (a), 50 years after the date of such making available.

*Duration of copyright
in broadcasts*

27.—(1) The copyright in a broadcast shall expire 50 years after the broadcast is first lawfully transmitted.

(2) The copyright in a repeat broadcast shall expire at the same time as the copyright in the original broadcast and no copyright shall subsist in a repeat broadcast which is transmitted after the expiration of the copyright in the original broadcast.

*Duration of copyright
in cable programmes*

28.—(1) The copyright in a cable programme shall expire 50 years after the cable programme is first lawfully included in a cable programme service.

(2) The copyright in a repeat cable programme shall expire at the same time as the copyright in the original cable programme and no copyright shall subsist in a repeat cable programme which is included in a cable programme service after the expiration of the copyright in the original cable programme.

*Duration of copyright
in typographical arrangements*

29. The copyright in a typographical arrangement of a published edition shall expire 50 years after the date on which it is first lawfully made available to the public.

*Duration of copyright
in computer-generated works*

30. The copyright in a work which is computer-generated shall expire 70 years after the date on which the work is first lawfully made available to the public.

*Duration of copyright
in works in volumes, parts, etc.*

31. Where a work is lawfully made available to the public in volumes, parts, instalments, issues or episodes and the copyright subsists from the date on which the work is so made available, the copyright shall subsist in respect of each separate item.

*Miscellaneous matters
in relation to duration*

32.—(1) Where the identity of the author of an anonymous or pseudonymous work becomes known or is disclosed after the term of copyright provided in section 24(2) has expired, the term of copyright provided in subsection (1) of that section shall not apply, and copyright in the work shall be deemed to have expired 70 years from the date on which the work was first lawfully made available to the public.

(2) Copyright shall not subsist in an anonymous or pseudonymous literary, dramatic, musical or artistic work, or original database where it is reasonable to presume that the author has been dead for 70 years or more.

(3) Copyright shall not subsist in an anonymous or pseudonymous film where it is reasonable to presume that the last of any of the persons specified in section 25 has been dead for 70 years or more.

(4) In relation to works of joint authorship, the reference in section 24 to the death of the author shall be construed —

- (a) where the identity of all of the authors is known, as a reference to the death of the last of the joint authors, or
- (b) where the identity of any of the authors is known and the identity of one or more of the others is not, as a reference to the death of the last of the joint authors whose identity is known.

(5) In relation to a work of joint authorship, references to the identity of the author becoming known or being disclosed shall be construed as references to the identity of any of the authors becoming known or being disclosed.

Expiry of copyright

33. Where the term of copyright in a work is not calculated from the death of the author or authors and the work is not lawfully made available to the public within 70 years of its creation, the copyright in that work shall expire on the expiration of that period of 70 years.

*Making available of a work
not previously made available*

34. Any person who, after the expiration of the copyright in a work, lawfully makes available to the public for the first time a work which was not previously so made available, shall benefit from rights equivalent to the rights of an author, other than the moral rights, for 25 years from the date on which the work is first lawfully made available to the public.

Calculation of term of copyright

35. Where a term of copyright is provided for in this Act, the term shall be calculated from the first day of January of the year following the event that gives rise to that term.

*Non-application of certain provisions
on duration to
Government copyright, etc.*

36. Sections 24 to 35 shall not apply to Government or Oireachtas copyright or to the copyright of prescribed international organisations.

**Chapter 4
Rights of Copyright Owner**

*Acts restricted by
copyright in a work*

37.—(1) Subject to the exceptions specified in Chapter 6 and to any provisions relating to licensing in this Part, the owner of the copyright in a work has the exclusive right to undertake or authorise other persons to undertake all or any of the following acts, namely:

- (a) to copy the work;
- (b) to make available to the public the work;
- (c) to make an adaptation of the work or to undertake either of the acts referred to in paragraph (a) or (b) in relation to an adaptation,

and those acts shall be known and in this Act referred to as “acts restricted by copyright”.

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

(3) References to the undertaking of an act restricted by the copyright in a work shall relate to the work as a whole or to any substantial part of the work and to whether the act is undertaken directly or indirectly.

*Playing of sound
recordings—licences of right*

38.—(1) Notwithstanding the provisions of section 37, where a person proposes to —

- (a) play a sound recording in public, or
- (b) include a sound recording in a broadcast or a cable programme service,

he or she may do so as of right where he or she —

- (i) agree to make payments in respect of such playing or inclusion in a broadcast or a cable programme service to a licensing body, and
- (ii) complies with the requirements of this section.

(2) A person may avail of the right to play a sound recording in public or to include a sound recording in a broadcast or a cable programme service, where he or she —

- (a) gives notice to each licensing body concerned of his or her intention to play sound recordings in public or include sound recordings in a broadcast or a cable programme service,
- (b) inform each of those bodies of the date on and from which he or she intends to play sound recordings in public or include sound recordings in a broadcast or a cable programme service,
- (c) makes payments to the licensing body at intervals of not less than 3 months in arrears,
- (d) complies with any reasonable conditions relating to payments under this section as may be notified to him or her by the licensing body from time to time, and
- (e) complies with any reasonable requests for information from the licensing body to enable it to calculate and manage payments under this section.

(3) A person who satisfies the conditions specified in subsection (2) shall be deemed to be in the same position as regards infringement of copyright as if he or she had been the holder of a licence granted by the owner of the copyright in question at all material times.

(4) Where the person intending to play sound recordings in public or to include sound recordings in a broadcast or a cable programme service and the licensing body fail to reach agreement as to fair payment under subsection (2) within a reasonable time, the terms of the proposed agreement shall be referred to the Controller for determination of the amount and terms of payment.

(5) In the case of a dispute referred to the Controller under subsection (4), a person shall not exercise the right conferred by subsection (1) unless he or she —

- (a) gives reasonable notice to the Controller that he or she has commenced or intends to commence the playing of sound recordings in public and that a dispute has arisen between him or her and the licensing body concerned as to the terms of payment and the exercise of the right; and

(b) applies to the Controller for a determination under subsection (4).

(6) Where the terms of a proposed agreement are referred to the Controller under subsection (4) a person shall not exercise a right conferred by subsection (1) unless he or she—

- (a) gives notice in writing to the Controller of his or her intention to exercise the right, and of the date on which he or she proposes to begin to do so, and
- (b) applies in writing to the Controller for a determination under subsection (4).

(7) On an application to settle the terms of payment being referred to the Controller, he or she shall consider the matter and make such order as he or she may determine to be reasonable in the circumstances and that orders shall take effect on and from the date on which the applicant begins to exercise the right, and any necessary repayments or further payments shall be made in respect of amounts which, in consequence of the terms of the order, have fallen due.

(8) Where no request for payment has been made by the licensing body, or where the amount requested by the licensing body is disputed by the person exercising the right then, pending the making of an order by the Controller under subsection (7), the person exercising the right shall pay to the licensing body such amount as he or she considers reasonable, and shall notify the licensing body and the Controller of his or her intention to do so.

(9) A person exercising the right conferred by subsection (1), or who has given notice to the Controller of his or her intention to do so, may also refer to the Controller the question of—

- (a) whether any condition relating to payment, notice of which has been given to him or her by the licensing body concerned is a reasonable condition, or
- (b) whether any licence condition, notice of which has been given to him or her by the licensing body in question, is a reasonable condition, or
- (c) whether any information required by the licensing body is information which the licensing body can reasonably require him or her to provide.

(10) Where a reference is made under subsection (9), the Controller shall consider the matter and make such order as he or she may determine to be reasonable in the circumstances.

(11) A person exercising the right conferred by subsection (1) or a licensing body may apply to the Controller to review any order under subsection (7) or (10).

(12) An application under subsection (11) may not be made except with the special leave of the Controller—

- (a) within 12 months from the date of the order or of the decision on a previous application under this section, or

- (b) where the order was made so as to be in force for 15 months or less, as a result of the decision on a previous application, is due to expire within 15 months of that decision,

until at least 3 months before the expiration of the order.

(13) Where an application is made under subsection (11), the Controller shall consider the matter and make such order confirming or varying the original order as he or she may determine to be reasonable in the circumstances and any order made under this subsection shall be for such period as may be specified by the Controller.

(14) This section shall not apply in any circumstances where sound recordings are made available to the public by wire or wireless means in such a way that members of the public may access the sound recordings from a place and at a time individually chosen by them (including the making available of copies of sound recordings through the Internet).

(15) Notwithstanding section 149, in this section “licensing body” means a society, a company registered under the Companies Acts, 1963 to 1999, or other organisation which has as one of its objects the negotiation or granting of licences to play sound recordings in public or to include sound recordings in broadcasts or cable programme services, either as owner or prospective owner of copyright in the said sound recording or as his or her exclusive licensee, agent or designated representative and shall include a human person who has the right to negotiate or grant a licence to play sound recordings in public or to include sound recordings in broadcasts or cable programme services, either as owner or prospective owner of copyright in the sound recordings.

Reproduction right

39.—(1) References in this Part to copying shall be construed as including references to all or any of the following, namely:

- (a) in relation to any work —
 - (i) storing the work in any medium,
 - (ii) the making of copies which are transient or incidental to some other use of the work;
- (b) in relation to an artistic work, 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;
- (c) in relation to a film, television broadcast or cable programme, making a photograph of the whole or a substantial part of any image forming part of the film, broadcast or programme;
- (d) in relation to a typographical arrangement of a published edition, making a reprographic copy of the arrangement.

(2) There shall be a right of the owner of copyright to copy a work or to authorise others to do so which shall be known and in this Part referred to as the “reproduction right”.

Making available right

40.—(1) References in this Part to the making available to the public of a work shall be construed as including all or any of the following, namely:

- (a) making available to the public of copies of the work, by wire or wireless means, in such a way that members of the public may access the work from a place and at a time chosen by them (including the making available of copies of works through the Internet);
- (b) performing, showing or playing a copy of the work in public;
- (c) broadcasting a copy of the work;
- (d) including a copy of the work in a cable programme service;
- (e) issuing copies of the work to the public;
- (f) renting copies of the work;
- (g) lending copies of the work without the payment of remuneration to the owner of the copyright in the work,

and references to “lawfully making available to the public” shall mean the undertaking of any of the acts referred to in paragraphs (a) to (g) by or with the licence of the copyright owner.

(2) References in this Part to the making available to the public of copies of a work shall include the making available to the public of the original of the work.

(3) Subject to subsection (4), the provision of facilities for enabling the making available to the public of copies of a work shall not of itself constitute an act of making available to the public of copies of the work.

(4) Without prejudice to subsection (3), where a person who provides facilities referred to in that subsection is notified by the owner of the copyright in the work concerned that those facilities are being used to infringe the copyright in that work and that person fails to remove that infringing material as soon as practicable thereafter that person shall also be liable for the infringement.

(5) Without prejudice to subsection (4), the Minister may prescribe the form of the notice to be given under that subsection and the form shall specify —

- (a) the name and address of the person claiming to be the owner of the copyright in the work concerned,
- (b) the grounds that the person requesting the removal of material has for such removal, and
- (c) details of the material which is to be removed.

(6) References in this Part to “performance”, in relation to a work, shall include —

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

- (b) any means of presentation of sounds or images, or any combination of sounds or images or representations thereof, including presentation by means of a sound recording, film, broadcast or cable programme of the work.

(7) Where copyright in a work is infringed by its being performed, played or shown in public, by means of apparatus for receiving sounds, images or data or any combination of sounds, images or data, or the representations thereof, conveyed by any means, the person by whom sounds, images or data or any combination of sounds, images or data, or the representations thereof, are sent shall not be regarded as liable for the infringement and a performer shall not be regarded as liable for the infringement to the extent that the infringement relates to his or her activity as a performer.

(8) There shall be a right of the owner of copyright to make available to the public copies of a work or to authorise others to do so which shall be known and in this Part referred to as the “making available right”.

Distribution right

41.—(1) References in this Part to the issue of copies of a work to the public shall be construed as including:

- (a) the act of putting into circulation in a Member State of the EEA copies not previously put into circulation in a Member State of the EEA by or with the licence of the copyright owner; or
- (b) the act of putting into circulation outside the Member States of the EEA copies not previously put into circulation in a Member State of the EEA or elsewhere.

(2) Without prejudice to the rental right or the lending right, references in this Part to the issue of copies of a work to the public shall not include:

- (a) any subsequent circulation of copies previously put into circulation; or
- (b) any subsequent importation of such copies into the State or any other Member State of the EEA,

except insofar as subsection (1) (a) applies to putting into circulation in the Member States of the EEA copies previously put into circulation outside the Member States of the EEA.

(3) References in this section to “circulation” shall include sale, rental or loan.

(4) There shall be a right of the owner of copyright to issue copies of a work to the public or to authorise others to do so which shall be known and in this Part referred to as the “distribution right”.

Rental and lending right

42.—(1) References in this Part to “rental” or “lending” shall be construed as including reference to the rental or lending of:

- (a) a literary, dramatic or musical work, film or original database;
- (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;
- (c) a sound recording; or
- (d) a typographical arrangement of a published edition,

and shall not include, in the case of a computer program, rentals where the program itself is not the essential object of the rental.

(2) In this Part, subject to subsection (3) —

- (a) “rental” means making a copy of a work available for use, on terms that it is to be or may be returned after a limited period of time, for direct or indirect economic or commercial advantage, and
- (b) “lending” means making a copy of a work available for use, on terms that it is to be or may be returned after a limited period of time, otherwise than for direct or indirect economic or commercial advantage, through an establishment to which members of the public have access.

(3) References in this Part to “rental” or “lending” shall not include the making available of copies of a work for the purposes of —

- (a) performing, playing or showing in public, broadcasting or inclusion in a cable programme service,
- (b) exhibition in public, or
- (c) on the spot reference use.

(4) The making of a copy of a work available between establishments to which members of the public have access shall not infringe the copyright in the work.

(5) For the purpose of this section, where lending by an establishment to which members of the public have access gives rise to a payment the amount of which does not exceed that which is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage.

(6)(a) There shall be a right of the owner of copyright to rent copies of a work or to authorise others to do so which shall be known and in this Part referred to as the “rental right”.

(b) There shall be a right of the owner of copyright to lend copies of a work or to authorise others to do so which shall be known and in this Part referred to as the “lending right”.

Infringement by adaptation of works

43.—(1) For the purposes of section 37 —

- (a) an adaptation is made when it is recorded in writing or otherwise, and
- (b) it shall be immaterial to the interpretation of this section whether the adaptation has been recorded in writing or otherwise at the time an act restricted by copyright is undertaken.

(2) Without prejudice to the generality of section 37(1) (c), in this Part, “adaptation” in relation to —

- (a) a literary or dramatic work, film, sound recording, broadcast, cable programme or typographical arrangement of a published edition, includes —
 - (i) a translation, arrangement or other alteration of the work,
 - (ii) a version of a dramatic work which is converted into an non-dramatic work or the conversion of an non-dramatic work into a dramatic work, and
 - (iii) a version of a work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction;
- (b) a musical work, includes a translation, arrangement or other alteration or transcription of the work;
- (c) an artistic work, includes a collage of the work with other works, an arrangement or other alteration of the work;
- (d) a computer program, includes a translation, arrangement or other alteration of the computer program; or
- (e) an original database, includes a translation, arrangement or other alteration of the original database.

(3) In this section “translation”, in relation to a computer program, includes the making of a version of the computer program in which it is converted into or out of a computer language or code or into a different computer language or code.

Chapter 5 Secondary Infringement of Copyright

Interpretation of infringing copy

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

(2) A copy shall be an infringing copy —

- (a) where the making of it constitutes an infringement of the copyright in the work concerned, or
- (b) where it has been or is to be imported into the State, and its making in the State would have constituted an infringement of the copyright in the work concerned, or a breach of an exclusive licence agreement relating to that work.

(3) A copy of a work which has previously been issued to the public in accordance with section 41 in any Member State of the EEA by, or with the licence of, the copyright owner shall not be deemed to be an infringing copy for the purposes of subsection (2).

(4) Where, in any proceedings for infringement of the copyright in a work, the issue arises whether a copy is an infringing copy and it is proved that —

- (a) the copy is a copy of the work concerned, and
- (b) copyright subsists in that work or has subsisted at any time in that work,

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

*Secondary infringement:
dealing with infringing copy*

45. A person infringes the copyright in a work where he or she without the licence of the copyright owner —

- (a) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (b) imports into the State, other than for his or her private and domestic use,
- (c) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or
- (d) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the owner of the copyright,

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

*Secondary infringement:
providing means
for making infringing copies*

46.—(1) A person infringes the copyright in a work where he or she, without the licence of the copyright owner —

- (a) makes,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, or
- (d) has in his or her possession, custody or control,

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

(2) A person infringes the copyright in a work where he or she, without the licence of the copyright owner, transmits the work by means of a telecommunication system (otherwise

than by broadcasting or inclusion in a cable programme service) knowing or having reason to believe that infringing copies of the work may be made by means of the reception of the transmission in the State or elsewhere.

*Secondary infringement:
permitting use of premises
for infringing performances*

47.—(1) Where the copyright in a 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 shall also be liable for the infringement unless, when that person gave permission, he or she had reason to believe that the performance would not infringe copyright.

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

*Secondary infringement:
permitting use of apparatus
for infringing performances*

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

- (a) playing sound recordings,
- (b) showing films, or
- (c) receiving sounds or images or any combination of sounds or images, or the representation thereof, conveyed by any means,

the following persons shall also be liable for the infringement:

- (i) a person who supplied the apparatus, or any substantial part thereof if, when he or she supplied the apparatus or part thereof —
 - (I) he or she knew or had reason to believe that the apparatus was likely to be used to infringe copyright, or
 - (II) in the case of apparatus the normal use of which involves a public performance, playing or showing, he or she had reason to believe that it would be used to infringe copyright;
- (ii) an owner or occupier of premises who gave permission for the apparatus to be brought onto the premises if, when the owner or occupier gave permission, he or she knew or had reason to believe that the apparatus was likely to be used to infringe copyright; and
- (iii) a person who supplied a copy of a sound recording or film used to infringe copyright if, when the person supplied it, he or she knew or had reason to believe that what was supplied, or a copy made directly or indirectly therefrom, was likely to be used to infringe copyright.

Chapter 6
Acts Permitted in Relation
to Works Protected by Copyright

Exemptions in respect of copyright works

49. In this Part, an act may be exempted under more than one category of exemption and the exemption of an act under one category of exemptions shall not preclude its exemption under another category.

Fair dealing:
research or private study

50.—(1) Fair dealing with a literary, dramatic, musical or artistic work, sound recording, film, broadcast, cable programme, or non -electronic original database , for the purposes of research or private study, shall not infringe any copyright in the work.

(2) Fair dealing with a typographical arrangement of a published edition for the purposes of research or private study shall not infringe any copyright in the arrangement.

(3) The copying by a person, other than the researcher or private student, is not fair dealing where —

- (a) in the case of a librarian or archivist, he or she does anything which is not permitted under section 63, or
- (b) in any other case, the person copying knows or has reason to believe that the copying will result in copies of substantially the same material being provided to more than one person at approximately the same time and for substantially the same purpose.

(4) In this Part, “fair dealing” means the making use of a literary, dramatic, musical or artistic work, film, sound recording, broadcast, cable programme, non -electronic original database or typographical arrangement of a published edition which has already been lawfully made available to the public, for a purpose and to an extent which will not unreasonably prejudice the interests of the owner of the copyright.

(5) In this Part, the following acts are not fair dealing —

- (a) converting a computer program expressed in a low level computer language into a version expressed in a higher level computer language, or
- (b) copying a computer program in an incidental manner in the course of converting that program.

Fair dealing: criticism or review

51.—(1) Fair dealing with a work for the purposes of criticism or review of that or another work or of a performance of a work shall not infringe any copyright in the work where the criticism or review is accompanied by a sufficient acknowledgement.

(2) Fair dealing with a work (other than a photograph) for the purpose of reporting current events shall not infringe copyright in that work, where the report is accompanied by a sufficient acknowledgement.

(3) In this Part, “sufficient acknowledgement” means an acknowledgement identifying the work concerned by its title or other description and identifying the author unless — ng

- (a) in the case of a work which has been lawfully made available to the public, it was so made available anonymously, or
- (b) in the case of a work which has not been made available to the public, it is not possible for a person without previous knowledge of the facts to ascertain the identity of the author of the work by reasonable enquiry.

Incidental inclusion of copyright material

52.—(1) The copyright in a work is not infringed by its inclusion in an incidental manner in another work.

(2) The copyright in a work is not infringed by the making available to the public of copies of anything the making of which was not, by virtue of subsection (1), an infringement of the copyright. nt

(3) A work shall not be regarded as included in an incidental manner in another work where it is included in a manner where the interests of the owner of the copyright are unreasonably prejudiced.

(4) The copyright in a work which has been lawfully made available to the public is not infringed by the use of quotations or extracts from the work, where such use does not prejudice the interests of the owner of the copyright in that work and such use is accompanied by a sufficient acknowledgement.

EDUCATION

*Acts done for purposes
of instruction or examination*

53.—(1) Subject to subsection (2), the copyright in a literary, dramatic, musical or artistic work or the typographical arrangement of a published edition is not infringed by its being copied in the course of instruction or of preparation for instruction. ts

(2) Subsection (1) shall not apply unless —

- (a) the copying is done by or on behalf of a person giving or receiving instruction,
- (b) the copying is not by means of a reprographic process, and
- (c) the copying is accompanied by a sufficient acknowledgement.

(3) Subject to subsection (4), the copyright in a sound recording, film, broadcast, cable programme or an original database is not infringed by its being copied in the course of instruction or of preparation for instruction.

(4) Subsection (3) shall not apply unless —

- (a) the copying is done by or on behalf of a person giving or receiving instruction,
- (b) the copying results in only a single copy being made, and
- (c) the copying is accompanied by a sufficient acknowledgement.

(5) Subject to subsection (6), the copyright in a work is not infringed by anything done for the purposes of an examination by way of setting questions, communicating questions to the candidates or answering questions.

(6) Subsection (5) shall not apply to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.

(7) Where a copy that would otherwise be an infringing copy is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

Anthologies for educational use

54.—(1) Subject to subsection (2), the inclusion of a short passage from a literary, dramatic or musical work, original database or typographical arrangement of a published edition which has been lawfully made available to the public in a collection that —

- (a) is intended for use —
 - (i) in educational establishments and is so described in its title, or
 - (ii) in any advertisements issued by or on behalf of the publisher,
 and
- (b) consists mainly of material in which no copyright subsists,

shall not infringe the copyright in the work where the work itself is not intended for use in those establishments and the inclusion is accompanied by a sufficient acknowledgement.

(2) Subsection (1) shall not authorise the inclusion of more than 2 excerpts from works by the same author in collections which have been lawfully made available to the public by the same publisher within a period of 5 years.

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

- (a) includes excerpts from works by him or her in collaboration with another author, and
- (b) where the passage concerned is from such a work, includes excerpts from works by any of the authors, whether alone or in collaboration with another author.

(4) References in this section to the use of a work in an educational establishment shall be construed as references to any use of that work for the educational purposes of that establishment.

*Performing, playing or showing work
in course of activities
of educational establishment*

55.—(1) The performance of a literary, dramatic or musical work before an audience limited to persons who are teachers or pupils in attendance at an educational establishment or other persons directly connected with the activities of that establishment—

- (a) by a teacher or pupil in the course of the activities of the establishment concerned, 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, broadcast or cable programme at an educational establishment before an audience referred to in subsection (1) for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright.

(3) For the purposes of this section, a person is not directly connected with the activities of an educational establishment by reason only that he or she is a parent or guardian of a pupil in attendance at the educational establishment concerned.

(4) The Minister may specify by order establishments (other than schools) to be educational establishments for the purposes of this Act.

*Recording by educational establishments
of broadcasts and cable programmes*

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

(2) This section shall not apply where there is a licensing scheme certified under section 173 and the person making the copies knew or ought to have been aware of the existence of the licensing scheme.

(3) Where a copy which would otherwise be an infringing copy is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

*Reprographic copying
by educational establishments
of certain works*

57.—(1) Reprographic copies of passages from literary, dramatic or musical works or typographical arrangements of published editions or original databases which have been lawfully made available to the public may, to the extent permitted under this section, be made by or on behalf of an educational establishment for the educational purposes of that establishment without infringing any copyright in the work, subject to those copies being accompanied by a sufficient acknowledgement.

(2) Not more than 5 per cent of any work may be copied by or on behalf of an educational establishment under this section in any calendar year.

(3) This section shall not apply where there is a licensing scheme certified under section 173 and the person making the copies knew or ought to have been aware of the existence of the licensing scheme.

(4) The terms of a licence granted to an educational establishment authorising the reprographic copying for the educational purposes of that establishment of passages from literary, dramatic or musical works or the typographical arrangements of published editions or original databases, which have been lawfully made available to the public, shall be void in 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 under this section.

(5) Where a copy which would otherwise be an infringing copy is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

Copyright not infringed by lending

58.—(1) Subject to subsection (2), educational establishments and establishments to which members of the public have access shall be exempt from the payment of remuneration under section 40(1) (g) and shall not infringe the copyright in a work by the lending of copies of the work.

(2) The Minister shall prescribe the educational establishments and the establishments to which members of the public have access for the purposes of subsection (1).

LIBRARIES AND ARCHIVES

Regulations relating to copying by libraries and archives

59.—(1) The Minister may make regulations for the purposes of this section and those regulations may make different provisions for different descriptions of libraries or archives and for different purposes.

(2) Without prejudice to the generality of subsection (1), the Minister may prescribe the libraries and archives to which sections 60 to 67 apply and may prescribe all or any of the following:

- (a) the conditions that are to be complied with when a librarian or archivist of a prescribed library or prescribed archive makes and supplies a copy of any part of a work which has been lawfully made available to the public to a person requiring a copy;
- (b) the conditions that are to be complied with when a librarian or archivist of a prescribed library or prescribed archive makes and supplies to another prescribed library or prescribed archive a copy of a work or part of a work which has been lawfully made available to the public and is required by that other prescribed library or prescribed archive;
- (c) the conditions that are to be complied with before a librarian or archivist of a prescribed library or prescribed archive makes a copy of a work in the permanent collection of the prescribed library or prescribed archive in order to preserve or replace that work in the permanent collection of that library or archive, or in the permanent collection of another prescribed library or prescribed archive;
- (d) the conditions that are to be complied with by a librarian or archivist of a prescribed library or prescribed archive when making or supplying a copy of the whole or part of certain works which have not been lawfully made available to the public for a work in the prescribed library or prescribed archive to a person requiring the copy.

Libraries and archives: declarations

60.—(1) Where regulations made by the Minister under section 59 require a librarian or archivist to be satisfied as to any matter before making or supplying a copy of a work —

- (a) the librarian or archivist concerned may rely on a declaration as to that matter by the person requesting the copy, unless the librarian or archivist is aware that it is false in any material particular, and
- (b) in such cases as may be prescribed, the librarian or archivist shall not make or supply the copy in the absence of a declaration in such form as may be prescribed.

(2) Where a person requesting a copy of a work makes a declaration which is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him or her —

- (a) he or she shall be liable for infringement of copyright as if he or she had made the copy, and
- (b) the copy shall be treated as an infringing copy.

*Copying by librarians or archivists:
articles in periodicals*

61.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply a copy of an article or contents page in a periodical without infringing any copyright in the article, the contents page or in any illustrations accompanying the article or the contents page or in the typographical arrangement. the

(2) A copy made under subsection (1) shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for the purposes of research or private study and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of the same article unless the person satisfies the librarian or archivist that the previous copy has been lost, stolen, discarded or destroyed or a reasonable period of time has elapsed, and that person shall not be furnished with more articles from a volume of a periodical than the number of issues that comprise that volume or 10 percent of the volume, whichever is the greater.

(3) In this section, “article” includes an item of any description in a periodical with the exception of the table of contents.

*Copying by librarians or archivists:
parts of works lawfully
made available to public*

62.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply a copy of part of a work (other than an article or the contents page in a periodical) which has been lawfully made available to the public without infringing any copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.

(2) A copy made under subsection (1) shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for the purposes of research or private study and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of the same material unless the person satisfies the librarian or archivist that the previous copy has been lost, stolen, discarded or destroyed or a reasonable period of time has elapsed, and that person shall not be furnished with a copy of more than a reasonable proportion of any work.

Multiple copying

63.—(1) A copy of a work shall not be supplied under section 61 or 62 to more than 3 persons whose requirements are related to any similar requirement of any other person.

(2) For the purposes of subsection (1) —

- (a) the requirements of persons shall be deemed to be similar where the requirements are for copies of substantially the same material at approximately the same time and for substantially the same purpose, and
- (b) the requirements of persons shall be deemed to be related where those persons receive instruction to which the material is relevant at the same time and place.

*Copying by librarians or archivists:
supply of copies
to other libraries and archives*

64.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply to another prescribed library or prescribed archive a copy of —

- (a) a periodical or article or the contents page contained therein, or
- (b) the whole or part of a work,

which has been lawfully made available to the public, without infringing any copyright in the periodical, in the article, in the contents page or in the work, in any illustrations accompanying the periodical, the article, the contents page or the work or in the typographical arrangement.

(2) Subsection (1) shall not apply where, at the time the copy is made, the librarian or archivist making it could, by reasonable enquiry, obtain the consent of a person entitled to authorise the making of the copy.

*Copying by librarians or archivists:
replacement copies of works*

65.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make a copy of a work in the permanent collection of the library or archive in order —

- (a) to preserve or replace that work by placing the copy in the permanent collection of that library or archive in addition to or in place of that work, or
- (b) to replace in the permanent collection of another prescribed library or prescribed archive a work which has been lost, destroyed or damaged,

without infringing the copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.

(2) This section shall only apply where it is not reasonably practicable to purchase a copy of the work concerned for the purposes of subsection (1).

*Copying by librarians or archivists
for certain purposes*

66.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make a copy of a work in the permanent collection of the library or archive —

- (a) for the purposes of obtaining insurance cover for the works concerned;
- (b) for purposes of security;
- (c) for the purposes of compiling or preparing a catalogue;
- (d) for exhibition in the library or archive; or
- (e) for the purposes of informing the public of an exhibition,

without infringing any copyright in the work, in any illustrations accompanying the work, or in the typographical arrangement.

(2) This section shall apply to copying conducted for the curatorial purposes specified in subsection (1), and to an extent reasonably justified by the non-commercial purpose to be achieved.

*Copying by librarians or archivists:
certain works not lawfully
made available to public*

67.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply a copy of a work or part of a work which has not been lawfully made available to the public from any work in the permanent collection of the library or archive without infringing the copyright in the work or in any illustrations accompanying the work or in the typographical arrangement.

(2) This section shall not apply where the copyright owner has prohibited copying of the work and at the time the copy is made the librarian or archivist making the copy knew, or ought to have been aware of, that fact.

(3) A copy made under subsection (1) shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for the purposes of research or private study and he or she will not use it for any other purpose and that person shall not be furnished with more than one copy of that work or part of that work.

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

68. Where a work of cultural or historical importance or interest may not lawfully be exported from the State unless a copy of it is made and deposited in a library, archive or other

institution designated by the Minister for Arts, Heritage, Gaeltacht⁶ and the Islands under section 50 of the National Cultural Institutions Act, 1997, it shall not be an infringement of copyright to make that copy.

*Copying by librarians or archivists:
exemptions*

69. The librarian or archivist of a library or archive prescribed by the Minister for the purpose of lending shall be exempt from the payment of remuneration under section 40(1) and shall not infringe the copyright in a work by the lending of copies of that work. A librarian, archivist, person or establishments shall be exempt from the payment of remuneration under section 40(1) (g) and shall not infringe the copyright in a work by the lending of a copy of that work to a library or archive prescribed by the Minister for the purpose of receiving such loans. (g)

*Copying by librarians or archivists:
infringing copy*

70. Where a copy which would otherwise be an infringing copy is made under section 61, 62, 64, 65, 67 or 68 but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

PUBLIC ADMINISTRATION

Parliamentary and judicial proceedings

71.—(1) The copyright in a work is not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting those proceedings.

(2) Subsection (1) shall not be construed as authorising the copying of a work which is itself a report of the proceedings which has been lawfully made available to the public.

Statutory inquiries

72.—(1) The copyright in a work is not infringed by anything done for the purposes of a statutory inquiry or for the purpose of reporting any such inquiry.

(2) Subsection (1) shall not be construed as authorising the copying of a work which is itself a report of the proceedings which has been lawfully made available to the public.

(3) The copyright in a work is not infringed by the making available to the public of copies of a report of a statutory inquiry containing the work or materials from the report.

Copying of material in public records

73. Any material which is comprised in records which are open to public inspection may be copied, and a copy may be supplied to any person, without infringement of copyright.

*Material open to public inspection
on a statutory register*

74.—(1) Without prejudice to the generality of section 73, where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, the copyright in the material is not infringed by the copying, for a purpose which does not involve the making available to the public of copies, of so much of the material as contains factual information of any description, by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register.

(2) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, the copyright in the material is not infringed by the copying or making available to the public of copies of that material, for the purpose of enabling the material to be inspected at another time or place, or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed, by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register.

(3) Where material is made available to the public under this section the person granting access to the material shall ensure that it bears a mark clearly indicating that it is provided for the purpose of inspection and that no other use of the material may be made without the licence of the copyright owner.

(4) Material may not be provided under this section unless the person granting access to the material has obtained from the person requesting the material a declaration, in such form as may be prescribed, indicating that the material is required for the sole purpose of enabling the material to be inspected at another time or place or to otherwise facilitate the exercise of the right of public inspection.

(5) Where material which is open to public inspection pursuant to a statutory requirement, or is on a statutory register, contains information about matters of general, scientific, technical, commercial or economic interest, the copyright in the material is not infringed by the copying or making available to the public of copies of that material for the purpose of disseminating that information, by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register.

(6) The Minister may prescribe the conditions which are to be complied with before material is made available to the public under this section.

(7) The Minister may by order provide that subsections (1) to (5) apply —

- (a) to material made open to public inspection by —
- (i) an international organisation specified in the order, or
 - (ii) a person specified in the order who has functions in the State under an international agreement to which the State is a party,
- or
- (b) to a register maintained by an international organisation specified in the order,

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

*Works communicated
to Government or Oireachtas*

75.—(1) Where a work has been communicated to the Government or either or both of the Houses of the Oireachtas for any purpose, by or with the licence of the copyright owner, and any fixation of the work or any thing containing the work is owned by, or is in the possession, custody or control of, the Government or either or both of the Houses of the Oireachtas, the Government or either or both of the Houses of the Oireachtas may copy the work, make available to the public copies of the work, or cause the work to be copied or made available to the public for the purpose for which the work was communicated to them, or for any related purpose which could reasonably have been anticipated by the copyright owner, without infringing the copyright in the work.

(2) The Government or either or both of the Houses of the Oireachtas shall not make available to the public copies of a work referred to in subsection (1) or cause the work to be copied or made available, under this section, where the work has previously been lawfully made available to the public other than under this section.

Acts done under statutory authority

76.—(1) Where the undertaking of a particular act is specifically authorised by an enactment then, unless the enactment provides otherwise, the undertaking of that act shall not infringe the copyright in a work.

(2) Nothing in this section shall be construed as excluding a defence available under any enactment.

Savings

77.—(1) Nothing in this Act shall affect any right or privilege of the Government subsisting otherwise than by virtue of an enactment, and nothing in this Act shall affect any right or privilege of the Government or of any other person under any enactment, except in so far as that enactment is expressly repealed, amended or modified by this Act.

(2) Nothing in this Act shall affect the right of the Government or of any person deriving title from the Government to sell, use or otherwise deal with articles forfeited under

the laws relating to customs or excise, including any articles forfeited by virtue of this Act or of any enactment repealed by this Act.

(3) Nothing in this Act shall affect the operation of any rule of equity relating to breaches of trust or confidence.

(4) Subject to subsections (1) to (3), no copyright or right in the nature of copyright, shall subsist other than by virtue of this Act or of some other enactment in that behalf.

DESIGNS

Acts done in reliance on registration of design

78.—(1) The copyright in a work is not infringed by anything done —

- (a) pursuant to an assignment or licence made or granted by a person registered under the Act of 1927 as the proprietor of a corresponding design, and
- (b) in good faith and in reliance on such registration and without notice of any proceedings for the cancellation of the registration or for rectifying the relevant entry in the register of designs.

(2) In subsection (1) “corresponding design”, in relation to a work, means a design within the meaning of the Act of 1927 which, if applied to an article, would produce anything which would be treated for the purposes of this Part as a copy of the work.

Exception from protection of copyright in certain works

79.—(1) The making of an object of any description which is in three dimensions shall not be taken to constitute an infringement of the copyright in a work in two dimensions, if the object would not appear, to a person who is not an expert in relation to objects of that description, to be a reproduction of the work.

(2) The act of reproducing an object of any description which is in three dimensions shall not be taken to constitute an infringement of the copyright in a work in two dimensions (other than a work relating to a work of architecture) where —

- (a) the lines, contours, colours, shape, texture and materials of the product itself or its ornamentation that appear in the work and are applied to the objects, are wholly or substantially functional, and
- (b) the object is one of a number, in excess of 50, of identical objects which have been manufactured and made commercially available by the owner of the copyright or by a person authorised by him or her in that behalf.

COMPUTER PROGRAMS

Back-up copies of computer programs

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

(2) For the purposes of this section and sections 81 and 82, a person is a “lawful user” of a computer program where, whether under a licence to undertake any act restricted by the copyright in the program or otherwise, he or she has a right to use the program, and “lawful use” shall be construed accordingly.

Lawful copies of computer programs

81.—(1) It is not an infringement of the copyright in a computer program for a lawful user—

- (a) to make a permanent or temporary copy of the whole or a part of the computer program by any means or in any form, or
- (b) to make a translation, adaptation, arrangement or any other alteration of the computer program and to copy the results thereof,

to achieve the interoperability of an independently created computer program with other programs where the following conditions are complied with:

- (i) those acts are performed by the lawful user or on his or her behalf by a person authorised to do so;
- (ii) the information necessary to achieve interoperability has not previously been available to the person referred to in subparagraph (i); and
- (iii) those acts are confined to the parts of the original program which are necessary to achieve interoperability.

(2) Subsection (1) shall not permit the information obtained through its application —

- (a) to be used other than to achieve the interoperability of the independently created computer program,
- (b) to be given to persons other than those referred to in that subsection, except where necessary for the interoperability of the independently created computer program, or
- (c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

*Exceptions to infringement of copyright
in computer programs*

82.—(1) It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to make a permanent or temporary copy of the whole or a part of the program by any means and in any form or to translate, adapt or arrange or in any other way alter the computer program where such actions are necessary for the use of the program by the lawful user in accordance with its intended purpose, including error correction.

(2) It is not an infringement of the copyright in a computer program for a lawful user of a copy of the 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, where he or she does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he or she is authorised to do.

ORIGINAL DATABASE

Access to or use of original database

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

TYPEFACES

Use of typefaces: printing

84.—(1) It is not an infringement of the copyright in a work which consists 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 subsection applies notwithstanding that an article is used which is an infringing copy of the work.

(2) A person infringes the copyright in a work consisting of the design of a typeface where he or she, without the licence of the copyright owner —

- (a) makes,

- (b) sells, rents or lends, or offers or exposes for sale, rental or loan, exhibits in public or distributes,
- (c) imports into the State, or
- (d) has in his or her possession, custody or control, for the purpose of sale, rental loan, or offering or exposing for sale, rental or loan, or for exhibition in public or distribution,

an article specifically designed or adapted for producing material in the particular typeface, knowing or having reason to believe that the article has been or is to be used to make copies that infringe the copyright in the work, including copies which would not be infringing copies under subsection (1).

*Articles for producing materials
in particular typefaces*

85.—(1) This section applies to the copyright in a 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 expiration of 15 years from the end of the calendar year in which the articles referred to in subsection (1) are marketed for the first time, 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 the copyright in the work.

WORKS IN ELECTRONIC FORM

Transfer of copies of work in electronic form

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

- (2) Where 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 conditions on which a transferee may undertake the acts which the purchaser was permitted to undertake,

then, any acts which the purchaser was permitted to undertake may also be undertaken by a transferee without infringement of the copyright, but any copy or adaptation or copy of an adaptation made by the purchaser which is not also transferred shall be treated as an infringing copy for those purposes and for all subsequent purposes.

(3) Subsection (2) applies where the original purchased copy is no longer usable and that which is transferred is a further copy used in its place.

(4) This section shall apply on a second and subsequent transfer in like manner as to the first transfer to a purchaser and references to the purchaser shall be construed as references to a second or subsequent transferee.

MISCELLANEOUS MATTERS
RELATING TO COPYRIGHT

Transient and incidental copies

87.—(1) The copyright in a work is not infringed by the making of a transient and incidental copy of that work which is technically required for the viewing of or listening to the work by a member of the public to whom a copy of the work is lawfully made available.

(2) Where a copy, which would otherwise be an infringing copy, is made under this section and is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes.

*Anonymous or pseudonymous works:
acts permitted*

88.—(1) The copyright in a work is not infringed by an act undertaken when, or pursuant to arrangements made when —

- (a) it is not possible to ascertain the identity of the author of the work by reasonable enquiry, and
- (b) it is reasonable to assume that the copyright has expired.

(2) Where a work is a work of joint authorship the reference in subsection (1) to the possibility of ascertaining the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors.

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

89.—(1) Subject to compliance with the conditions specified in subsection (2), where a record of spoken words is made, in writing or otherwise, for the purpose of —

- (a) reporting current events, or
- (b) broadcasting or including in a cable programme service the work or part of the work,

it is not an infringement of any copyright in the words as a literary or dramatic work, or in any literary or dramatic work or recording arising from the recording of the words, to use the record or material taken from it or to copy the record, or any such material, and to use the copy for the purposes referred to in paragraph (a) or (b).

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

- (a) that the record is a direct record of the spoken words and is not taken from a previous record or from a broadcast or cable programme,
- (b) that the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe the copyright in the work,
- (c) that the use made of the record or material taken from it is not prohibited by or on behalf of the speaker or copyright owner before the record was made, and
- (d) that the use made of the record or material taken from it is by or with the authority of a person who is lawfully in possession of the record.

Public reading or recitation of works

90.—(1) The reading or recitation in public by one person of any reasonable extract from a literary or dramatic work which has been lawfully made available to the public, where accompanied by a sufficient acknowledgment, shall not infringe the copyright in the work.

(2) The copyright in a work is not infringed by the making of a fixation, or the broadcasting or inclusion in a cable programme service, of a reading or recitation which by virtue of subsection (1) does not infringe the copyright in the work.

(3) Where a copy, which would otherwise be an infringing copy, is made under this section and is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes.

Abstracts of scientific or technical articles

91. Where an article on a scientific or technical subject is lawfully made available to the public in a periodical accompanied by an abstract indicating the contents of the article, it is not an infringement of the copyright in the abstract or in the article to copy the abstract or to make available to the public copies of the abstract or to include the abstract in any other work.

Fixations of performances of works of folklore

92.—(1) A fixation of a performance of an anonymous work which has not been lawfully made available to the public may be made for the purpose of including it in an archive maintained by a designated body without infringing the copyright in the work where at the time the fixation is made —

- (a) the making of the fixation does not infringe any other copyright, and

(b) the making of the fixation is not prohibited by any performer.

(2) A copy of a fixation made under subsection (1) and included in an archive maintained by a designated body may, subject to compliance with the conditions referred to in subsection (3), be made and supplied by the archivist without infringing the copyright in the fixation or the works included in it.

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

- (a) that a copy may not be supplied other than to a person who satisfies the archivist that he or she requires the copy for the purposes of research or private study and he or she will not use it for any other purpose, and
- (b) that a person shall not be furnished with more than one copy of the same fixation.

(4) In this section, “designated body” means a body designated for the purposes of this section by order of the Minister who shall not designate a body unless he or she is satisfied that the body is not established or conducted for profit.

*Representation of certain artistic works
on public display*

93.—(1) This section applies to the copyright in —

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

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

- (a) making a painting, drawing, diagram, map, chart, plan, engraving, etching, lithograph, woodcut, print or similar thing representing it,
- (b) making a photograph or film of it, or
- (c) broadcasting or including in a cable programme service, an image of it.

(3) The copyright in a work to which this section applies is not infringed by the making available to the public of copies of anything the making of which is not, by virtue of this section, an infringement of the copyright in the work.

Advertising sale of artistic work

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

(2) Where a copy which would otherwise be an infringing copy is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

*Making of subsequent
works by same artist*

95. Where the author of an artistic work is not the copyright owner, it is not an infringement of the copyright in the work to copy the work in making another artistic work, where the author does not repeat or imitate the main design of the earlier work.

Reconstruction of buildings

96. Where anything is done for the purposes of reconstructing a building it is not an infringement of the copyright in the building or in any drawings or plans in accordance with which the building was constructed by or with the licence of the copyright owner.

*Playing or showing of sound recordings,
broadcasts and cable programmes
in certain premises*

97.—(1) Subject to subsection (2), it is not an infringement of the copyright in a sound recording, broadcast or cable programme to cause a sound recording, broadcast or cable programme to be heard or viewed where it is heard or viewed —

- (a) in part of the premises where sleeping accommodation is provided for the residents or inmates, and
- (b) as part of the amenities provided exclusively or mainly for residents or inmates.

(2) Subsection (1) does not apply in respect of any part of premises to which subsection (1) applies where there is a discrete charge made for admission to the part of the premises where a sound recording, broadcast or cable programme is to be heard or viewed.

*Playing of sound recordings
for clubs, societies, etc.*

98.—(1) Subject to compliance with the conditions specified in subsection (2), it is not an infringement of the copyright in a sound recording to play it as part of the private activities of or for the benefit of a club, society or other organisation.

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

- (a) that the club, society or other organisation is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare, and
- (b) that the proceeds of any charge for admission to the place where the sound recording is to be heard are applied solely for the purposes of the club, society or other organisation.

(3) Subsection (1) shall not apply in the case of any club, society or other organisation where a charge is made for admission to the place where the sound recording is heard and any of the proceeds of the charge are applied other than for the purposes of the club, society or other organisation.

*Copying for purpose of broadcast
or cable programme*

99.—(1) Where, by virtue of a licence or assignment of copyright, a person is authorised to broadcast or include in a cable programme service a work or an adaptation of a work he or she shall be deemed to be licensed by the owner of the copyright in the work to copy or authorise the copying of that work by means of his or her own facilities for the purposes of his or her own broadcast or cable programme.

(2) It shall be a condition of a licence conferred by virtue of subsection (1) that any copy resulting from the exercise of rights granted by the licence shall not be used for any purpose other than the broadcast or cable programme and shall be destroyed within 3 months of first being used for broadcasting or included in a cable programme service.

(3) A copy of a work made under this section shall be treated as an infringing copy where it is used for purposes other than broadcasting or inclusion in a cable programme service or where it is used after the expiration of 3 months from the date on which it is first used for broadcasting or included in a cable programme service.

*Recording for purposes of supervision
and control of broadcasts
and cable programmes*

100.—(1) The copyright in a work is not infringed by the making or use by an authorised broadcaster or authorised cable programme service provider, for the purpose of maintaining supervision and control over programmes broadcast by them or included by them in a cable programme service, of fixations of those programmes.

(2) The copyright in a work is not infringed by any use made by a body established by the State to regulate the operations of broadcasters or cable programme service providers of any fixations of broadcasts or cable programmes.

Recording for purposes of time-shifting

101.—(1) The making for private and domestic use of a fixation of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at another time or place shall not infringe the copyright in the broadcast or cable programme or in any work included in such a broadcast or cable programme.

(2) Subject to subsection (3), the making by an establishment for private and domestic use of a fixation of a broadcast or cable programme solely for the purpose of enabling it to be

viewed or listened to at another time or place shall not infringe the copyright in the broadcast or cable programme or in any work included in such a broadcast or cable programme.

(3) The Minister may specify by order establishments for the purposes of this section.

(4) Where a fixation which would otherwise be an infringing copy is made under this section and is subsequently sold, rented or (otherwise than to a person's family member or friend for private and domestic purposes) lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes.

*Photographs of television broadcasts
or cable programmes*

102. The making for private and domestic use of a photograph of the whole or any part of an image forming part of a television broadcast or cable programme, or of a copy of such a photograph, shall not infringe the copyright in the broadcast or cable programme or in any film included in it.

*Reception and retransmission of broadcasts
in cable programme services*

103.—(1) This section applies where a broadcast made from a place in the State is, by reception and immediate retransmission, without alteration, included in a cable programme service.

(2) The copyright in a broadcast to which this section applies is not infringed where —

- (a) the inclusion is pursuant to a statutory requirement, or
- (b) the broadcast is made for reception in the area in which the cable programme service is provided and it is not a satellite transmission or an encrypted transmission.

(3) Without prejudice to the generality of subsection (4), the copyright in a work included in the broadcast is not infringed where —

- (a) the inclusion is pursuant to a statutory requirement, or
- (b) the broadcast is made for reception in the area in which the cable programme service is provided and it is not a satellite transmission or an encrypted transmission.

(4) Where the making of a broadcast is an infringement of the copyright in a work included in the broadcast, the fact that the broadcast was retransmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.

Provision of modified works

104.—(1) A designated body may —

- (a) make a copy of a work for the purpose of modifying that copy to meet the special needs of a person who has a physical or mental disability, and
- (b) supply that modified copy to that person,

without infringing the copyright in that work.

(2) Where a copy which would otherwise be an infringing copy is made under this section, but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

(3) In this section, “designated body” means a body designated for the purposes of this section by order of the Minister who shall not designate a body unless he or she is satisfied that the body is not established or conducted for profit.

Recording for archival purposes

105.—(1) A fixation of a broadcast or a cable programme of a designated class or a copy of such a fixation may be made for the purpose of including it in an archive maintained by a designated body without infringing the copyright in the broadcast or cable programme or in any work included therein.

(2) In this section —

“designated body” means a body designated for the purposes of this section by order of the Minister;

“designated class” means a class designated for the purpose of this section by order of the Minister.

(3) The Ministers shall not designate a body unless he or she is satisfied that the body is not established or conducted for profit.

Adaptation of a work

106. It is not an infringement of the copyright in a work to make an adaptation of the work by any act which may otherwise be done without infringing the copyright in a work under this Chapter.

Chapter 7
Copyright: Moral Rights

Paternity Right

107.—(1) Subject to the exceptions specified in section 108, the author of a work shall have the right to be identified as the author and that right shall also apply in relation to an adaptation of the work.

(2) Where an author uses a pseudonym, initials or other form of identification, that form shall be used to identify his or her work.

(3) The right conferred by this section shall be known and in this Part referred to as the “paternity right”.

Exception to paternity right

108.—(1) The paternity right is not infringed by anything done under section 52, 53 (5), 71, 72 or 88.

(2) The paternity right shall not apply to anything done by or with the authority of the copyright owner where the copyright in the work originally vested in an employer under section 23.

(3) The paternity right shall not apply in relation to a work made for the purpose of reporting current events.

(4) The paternity right shall not apply to a work made for the purposes of —

(a) a newspaper or periodical, or

(b) an encyclopaedia, dictionary, yearbook or other collective work of reference,

or in relation to a work made available to the public with the licence of the author for those purposes.

(5) The paternity right shall not apply in relation to a work —

(a) in which Government or Oireachtas copyright subsists, or

(b) in which the copyright originally vested in a prescribed international organisation,

unless the author has previously been identified as the author in or on copies of the work which have been lawfully made available to the public.

Integrity right

109.—(1) Subject to the exceptions and qualifications specified in sections 110 and 111, the author of a work shall have the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the work which would prejudice his or her reputation and that right shall also apply in relation to an adaptation of the work.

(2) The right conferred by this section applies to any addition to, deletion from or alteration to or adaptation of parts of a work resulting from any previous addition to, deletion from or alteration to or adaptation of a work or parts of a work by a person other than the author, where those parts are attributed to, or are likely to be regarded as the work of, the author.

(3) The right conferred by this section shall be known and in this Part referred to as the “integrity right”.

Exceptions to integrity right

110.—(1) Subject to subsections (2) and (3), the integrity right shall not apply to —

- (a) a work made for the purpose of reporting current events;
- (b) a work made for the purposes of —
 - (i) a newspaper or periodical, or
 - (ii) an encyclopaedia, dictionary, yearbook or other collective work of reference, or to a work made available to the public with the licence of the author for such purposes; or
- (c) as a subsequent use of a work referred to in paragraph (b) without any modification of the version made available to the public under that paragraph.

(2) Subject to subsection (3), the integrity right is not infringed —

- (a) by an act which under section 51 or 88 would not infringe the copyright in a work, or
- (b) by anything done for the purposes of —
 - (i) avoiding any contravention of civil or criminal law,
 - (ii) complying with a duty imposed by or under an enactment, or
 - (iii) in the case of authorised broadcasters or authorised cable programme service providers, avoiding the inclusion in a programme which is broadcast or included in a cable programme service by those broadcasters or providers, of anything which is likely to offend public morality or which is likely to encourage or incite to crime or to lead to public disorder.

(3) Subsection (2) (b) shall not apply unless the author is identified at the time of the act concerned or has previously been identified in or on copies of the work which have been lawfully made available to the public and there is a sufficient disclaimer.

(4) In this Part “sufficient disclaimer”, in relation to an act capable of infringing the integrity right, means a clear and reasonably prominent indication given at the time of the act or where the author is then identified, appearing with the identification, that the work has been subjected to an action which the author has not licensed. t,

*Qualification of integrity right
in certain cases*

111.—(1) The integrity right shall be qualified in the manners specified in subsection (2) in respect of —

- (a) works in which copyright originally vested in the author’s employer under section 23,
- (b) works in which Government or Oireachtas copyright subsists, and
- (c) works in which copyright originally vested in a prescribed international organisation.

(2) The integrity right shall not apply to anything done in relation to works referred to in subsection (1) by or with the licence of the copyright owner unless the author —

- (a) is identified at the time of the act concerned, or
- (b) has previously been identified in or on copies of the work which have been lawfully made available to the public,

and where, in such a case, the integrity right applies, that right shall not be infringed where there is a sufficient disclaimer.

*Secondary infringement of integrity right:
possessing or dealing*

112. A person infringes the integrity right where he or she —

- (a) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (b) imports into the State, other than for his or her private and domestic use,
- (c) in the course of a business, trade or profession, has in his or her possession, custody or control, or
- (d) makes available to the public,

a work or a copy of a work or an adaptation thereof which he or she knows or has reason to believe has, been subjected to any distortion, mutilation or other modification or other derogatory action within the meaning of section 109.

False attribution of work

113.—(1) A person has the right not to have a work falsely attributed to him or her as author.

(2) The right conferred by subsection (1) is infringed by a person where he or she —

- (a) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (b) imports into the State, otherwise than for his or her private and domestic use,
- (c) in the course of a business, trade or profession, has in his or her possession, custody or control, or
- (d) makes available to the public,

a work, or a copy of a work, in or on which there is a false attribution, knowing or having reason to believe that the attribution is false.

(3) The right conferred by subsection (1) is infringed by a person where he or she —

- (a) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (b) imports into the State, otherwise than for his or her private and domestic use,
- (c) in the course of a business, trade or profession, has in his or her possession, custody or control, or
- (d) makes available to the public,

a work which has been altered as being the unaltered work of the author, or a copy of such a work as being a copy of the unaltered work of the author, knowing or having reason to believe that the work or the copy of the work has been altered.

(4) This section applies where a work is falsely represented as being an adaptation of the work of a person in the same manner as it applies where a work is so represented as being the work of a person.

(5) In this Part “attribution”, in relation to a work, means a statement, express or implied, as to who is the author of the work.

*Right to privacy
in photographs and films*

114.—(1) Subject to the exceptions specified in subsection (3), a person who, for private and domestic purposes, commissions the taking of a photograph or the making of a film has, where copy right subsists in the resulting work, the right not to have the work or copies of the work made available to the public.

(2) Subject to subsection (3), the act of making available to the public, or authorising the making available to the public, of a work or copies of a work referred to in subsection (1) without the authority of the person who commissions the work infringes the right conferred by subsection (1).

(3) The right conferred by subsection (1) shall not be infringed by an act which under section 52, 71, 72, 76 or 88 would not infringe the copyright in the work.

Duration of moral rights

115.—(1) The paternity right, the integrity right and the right conferred by section 114 to privacy in photographs and films shall subsist for the same period of time as the copyright in the work subsists.

(2) The right conferred by section 113 in relation to a false attribution of a work shall subsist for 20 years after the death of the person on whom the right is conferred.

Waiver of rights

116.—(1) Subject to subsection (3), any of the rights conferred by this Chapter may be waived.

(2) A waiver made under this section shall be in writing and signed by the person waiving the right concerned.

(3) A waiver made under subsection (1) —

(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 where a waiver is made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, that waiver shall be presumed to extend to his or her licensees, successors in title or other persons claiming under them 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 referred to in subsection (1).

(5) It shall not be an infringement of any of the rights conferred by this Chapter for a person to undertake any act where the person entitled to the right conferred by this Chapter has consented to the use of those rights by that other person.

*Application of certain provisions
to works of joint authorship
and joint ownership*

117.—(1) The paternity right or the integrity right is, in the case of a work of joint authorship, a right of each joint author.

(2) A waiver made under section 116 of the paternity right or the integrity right by one joint author shall not affect the rights of the other joint authors.

(3) The right conferred by this section 113 in relation to false attribution is infringed by—

- (a) any false statement as to the authorship of a work of joint authorship, or
- (b) 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 attributed.

(4) The right conferred by section 114 to privacy in photographs and films is, in the case of a work made pursuant to a joint commission, the right of each person who commissioned the making of the work and where a waiver is made by one of them under section 116 that waivers shall not affect the rights of the other persons.

Moral rights not assignable or alienable

118. The rights conferred by Chapter 7 shall be incapable of assignment or alienation.

Transmission of moral rights on death

119.—(1) On the death of a person entitled to the paternity right, the integrity right, or the right conferred by section 114 to privacy in photographs and films —

- (a) the right passes by testamentary disposition to such person as the person entitled to the right may direct,
- (b) where there is no direct instruction as to whom the right passes but the copyright in the work concerned forms part of an estate, the right passes to the person to whom the copyright passes, and
- (c) where the right does not pass under paragraph (a) or (b), it is exercisable by the personal representatives of the person entitled to the right.

(2) Where copyright forming part of an estate passes in part to one person and in part to another, so as to apply —

- (a) to one or more, but not all, of the acts the copyright owner has the right to do or to undertake 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 divided accordingly.

(3) Where, under subsection (1), a right becomes exercisable by more than one person—

- (a) it may, in the case of the paternity right, be exercised by any of them,
- (b) it is, in the case of the integrity right or the right to privacy in photographs and films conferred by section 114, a right exercisable by each of them, and

(c) any waiver of the right under section 116 made by one of them shall not affect the rights of the other persons.

(4) A consent or waiver binds any person to whom a right passes under subsection (1).

(5) Any infringement of the right conferred by section 113 in relation to a false attribution of a work after the death of a person is actionable by the personal representatives of that person.

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

Chapter 8 Dealings with Rights in Copyright Works

Assignment and licences

120.—(1) The copyright in a work is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) A transmission of the copyright in a work by assignment, by testamentary disposition or by operation of law may be partial, so as to apply —

- (a) to one or more but not all of the acts the copyright owner has the right to undertake or authorise, and
- (b) to part but not the whole of the period for which the copyright in the work is to subsist.

(3) An assignment of the copyright in a work, whether in whole or in part, is not effective unless it is in writing and 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 or her 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 undertaking any act with or without the licence of the copyright owners shall be construed accordingly.

(5) A licence granted by a prospective owner of copyright is binding on every successor in title to his or her interest (or prospective 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 undertaking any act with or without the licence of the copyright owner shall be construed accordingly.

Prospective ownership of copyright

121.—(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, whether in whole or in part, to another person, then, where, on the copyright coming into existence, the assignee or his or her successor in title, or another person claiming under him or her, would be entitled as against all other persons to require the copyright to be vested in him or her, the copyright shall vest in the assignee or his or her successor in title under this section or any other person claiming under him or her.

(2) Where, at the time when any copyright comes into existence, the person who, if he or she were then living, would be entitled to the copyright is dead, the copyright shall devolve as if it had subsisted immediately before his or her death and he or she had then been the owner of the copyright.

(3) The rights of an assignee of future copyright shall not be prejudiced by the fact that an agreement referred to in subsection (1) was made before the commencement of this section.

(4) 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;

“prospective owner,” includes a person who is prospectively entitled to copyright by virtue of an agreement made in relation to future copyright.

Exclusive licences

122.—(1) In this Part, an “exclusive licence” means a licence in writing which is signed by or on behalf of an owner or prospective owner of the copyright which authorises 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 and reference to an exclusive licensee shall be construed accordingly.

(2) An exclusive licensee has the same rights against a successor in title who is bound by the licence as he or she has against the person granting the licence.

*Copyright to pass under will
with certain original fixations*

123. Where, under a bequest (whether specific or general), a person is entitled, beneficially or otherwise, to any material thing containing an original fixation of a work which has not been made available to the public before the death of the testator, the bequest shall be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his or her death, unless a contrary intention is indicated in the will of the testator or in a codicil to that will.

*Presumption of transfer of rental right
in case of film production agreement*

124.—(1) Without prejudice to the right of an author to receive equitable remuneration in respect of a rental right, where an agreement concerning film production is concluded between an author or a prospective author of a copyright work and a film producer, the author or prospective 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 work of the author in the film.

(2) Where a presumption of transfer of the rental right arises by virtue of subsection (1), the absence of a signature by or on behalf of the author shall not restrict the operation of section 120 or 121.

(3) The reference in subsection (1) to an agreement concluded between an author or a prospective author and a film producer includes any agreement whether made by them directly or through intermediaries.

(4) The right to equitable remuneration on the transfer of the rental right applies where there is a presumed transfer under this section as in the case of an actual transfer.

*Right to equitable remuneration
where rental right transferred*

125.—(1) Without prejudice to the generality of section 124, where an author has transferred his or her rental right he or she retains the right to equitable remuneration for the rental.

(2) The right to equitable remuneration conferred by this section shall not be waived by the author and the author shall not assign the right to equitable remuneration except to a collecting society for the purpose of enabling the collecting society to exercise that right on his or her behalf.

(3) The right to equitable remuneration is transmissible by way of testamentary disposition or by operation of law, as personal or moveable property and it may be further transmitted, including by assignment, by any person who legally acquires the right.

(4) Equitable remuneration under this section is payable by the person to whom the rental right is transferred or any successor in title.

(5) Subject to section 126, the amount payable by way of equitable remuneration is that which has been agreed by or on behalf of the persons by and to whom it is payable.

(6) An agreement is void in so far as it purports to exclude or restrict the right to equitable remuneration conferred by this section.

(7) References in this Part to the transfer of the rental right by one person to another include any arrangement having that effect whether made by them directly or through intermediaries.

(8) In this section, “collecting society” means a society or other organisation which has as one of its main objects the exercise of the right to collect equitable remuneration under this section on behalf of more than one author.

*Equitable remuneration:
reference of determination
of amount to Controller*

126.—(1) In default of agreement as to the amount of equitable remuneration payable under section 125, the person by or to whom it is payable may apply to the Controller for an order under subsection (4).

(2) Subject to subsection (3), a person by or to whom equitable remuneration is payable under section 125 may also apply to the Controller —

- (a) to vary any agreement as to the amount payable, or
- (b) to vary any previous determination of the Controller as to the amount payable.

(3) An application may not be made under subsection (2) within 12 months from the date of the previous determination except with the special leave of the Controller.

(4) On an application being made under this section the Controller shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as he or she may determine to be reasonable in the circumstances, having regard to the importance of the contribution of the author.

(5) An order made under subsection (4) shall have effect from the date on which it is made or such later date as may be specified by the Controller.

(6) Remuneration shall not be considered inequitable because it is paid by way of a single payment or at the time of transfer of the rental right.

(7) An agreement is void in so far as it purports to prevent a person challenging the amount of equitable remuneration or to restrict the powers of the Controller conferred by this section.

Chapter 9
Remedies: Copyright Owner

*Infringement actionable
by copyright owner*

127.—(1) An infringement of the copyright in a work is actionable by the copyright owner.

(2) In an action for infringement of the copyright in a work under this section, all relief by way of damages, injunction, account of profits or otherwise is available to the plaintiff as it is available in respect of the infringement of any other property right.

(3) Subject to section 139, where in an action for infringement of the copyright in a work the defendant does not admit that the plaintiff is the owner of the copyright the court may direct that evidence in relation to ownership of the copyright be given on affidavit and the court may decide the issue having considered any affidavit presented to it unless it is satisfied that any conflict of evidence between the affidavits may not be resolved other than by hearing oral testimony in which case the court may order that oral evidence may be adduced.

(4) Hearsay evidence may be accepted for the purposes of a hearing under subsection (3).

Award of damages in infringement action

128.—(1) The court may, in an action for infringement of copyright award such damages as, having regard to all the circumstances of the case, it considers just.

(2) Without prejudice to any other remedy, where, in an action for infringement of the copyright in a work, 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 the defendant.

(3) In exercising its powers under subsection (1) in addition to or as an alternative to compensating the plaintiff for financial loss, the court may award aggravated or exemplary damages or both aggravated and exemplary damages.

*Action in respect
of construction of building*

129. In an action for infringement of the copyright in respect of the construction of a building no injunction or other orders shall be made —

- (a) after the construction of the building has begun, so as to prevent it from being completed, or
- (b) so as to require the building, in so far as it has been constructed, to be demolished.

*Undertakings concerning
licences of right*

130.—(1) Where, in proceedings for infringement of the copyright in a work in respect of which a licence is available as of right, the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Controller —

- (a) no injunction shall be granted against the defendant,
- (b) no order for delivery up shall be made under section 131, and
- (c) the amount recoverable against the defendant by way of damages or on an account of profits shall not exceed three times the amount which would have been payable by the defendant as licensee where a licence on those terms had been granted before the earliest infringement.

(2) An undertaking under subsection (1) may be given at any time before the final order in the proceedings without any admission of liability.

(3) Nothing in this section shall affect the remedies available in respect of an infringement committed before a licence was available as of right.

Order for delivery up

131.—(1) Where a person

- (a) in the course of a business, trade or profession, has in his or her possession, custody or control an infringing copy of a work,
- (b) has in his or her possession, custody or control an article specifically designed or adapted for making copies of a copyright work, knowing or having reason to believe that it has been or is to be used to make infringing copies, or
- (c) has in his or her possession, custody or control a protection-defeating device,

the owner of the copyright in the work may apply to the appropriate court for an order that the infringing copy, article or device be delivered up to him or her or to such other person as the court may direct.

(2) An application under subsection (1) shall not be made after the expiration of the period specified in section 144(1) as being the limit of the period for delivery up 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 as to the disposal of the infringing copy, article or device.

(3) A person to whom an infringing copy, article or device is delivered up pursuant to an order made under this section shall, where an order under section 145 as to the disposal of the infringing copy, article or device is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

*Application to District Court
for seizure of infringing copies,
articles or devices*

132.—(1) Without prejudice to section 133, where the owner of the copyright in a work applies to the District Court, it may, where satisfied that there are reasonable grounds for believing that there are being hawked, carried about or marketed —

- (a) infringing copies of the work,
- (b) articles specifically designed or adapted for making copies of a work, knowing or having reason to believe that it has been or is to be used for making infringing copies of a work, or
- (c) protection-defeating devices,

authorise by order a member of the Garda Síochána [Police Force] to seize without warrant the copies, articles or devices and to bring them before the District Court.

(2) On being satisfied that any copy, article or device referred to in subsection (1) is —

- (a) an infringing copy,
- (b) articles specifically designed or adapted for making copies of a work, which the person hawking, carrying about or marketing those articles, knows or has reason to believe that they have been or are to be used to make infringing copies of a work, or
- (c) a protection-defeating device,

the District Court may order the copy, article or device to be destroyed or to be delivered up to the owner of the copyright or otherwise dealt with as the Court may think fit.

(3) In an application to the District Court under subsection (1) or, in any application or interlocutory motion to a court of competent jurisdiction for an order *ex parte* which would permit the applicant to enter and search premises or place specified therein and take possession of material found therein on terms set out in such order, the court hearing such an application may receive hearsay evidence to the effect that the witness or deponent believes that the material may be found in a particular location.

(4) A witness or deponent shall not be obliged to indicate the source of the information upon which that witness formed the belief that material may be found in a particular location.

(5) After the implementation of an order made under this section, the court may, on the application of a person aggrieved by it, award damages against the applicant for the order as it considers just, on being satisfied that —

- (a) no infringement of copyright has been established, and
- (b) the information on which the copyright owner applied for the order was given maliciously.

*Right of copyright owner
to seize infringing copies,
articles or devices, etc.*

133.—(1) Where it would be impracticable for the owner of the copyright in a work to apply to the District Court for an order under section 132, a copy, article or device referred to in section 132(1) in respect of which the copyright owner would be entitled to apply for an order for delivery up under section 131, may be seized and detained by the copyright owner or a designated representative thereof where the copy, article or device is found being hawked, carried about or marketed.

(2) The right to seize and detain conferred by subsection (1) is exercisable, subject to subsections (4) to (8) of this section, and is subject to any decision of the court relating to disposal of infringing copies, articles or devices under section 145.

(3) A person who seizes any infringing copies, articles or devices under this section shall apply to the District Court for an order to dispose of those copies, articles or devices within 30 days of the seizure.

(4) Before any infringing copies, articles or devices are seized under this section notice of the time and place of the proposed seizure shall be given to a member of the Garda Síochána in the District Court Area in which the copies, articles or devices are to be seized.

(5) A person exercising the right to seize and detain conferred by subsection (1) may enter premises to which members of the public have access.

(6) A person exercising the right to seize and detain conferred by subsection (1) may not seize anything in the possession, custody or control of a person at his or her permanent or regular place of business, trade or profession, and may not use any force.

(7) Without prejudice to the generality of subsection (6), a person exercising the right to seize and detain conferred by subsection (1) may make an inventory or prepare other evidence of infringement of copyright or potential infringement of copyright.

(8) At the time when any infringing copies, articles or devices are seized under this section there shall be given to the owner, occupier or person in charge of the place where the copies, articles or devices are seized a notice, in the prescribed form, informing the person of the right of the owner of the copies, articles or devices being seized to apply to the District Court for the return of the copies, articles or devices on the grounds that they are not —

- (a) infringing copies of a work,
- (b) articles that have been or are to be used to make infringing copies, or
- (c) protection-defeating devices.

(9) Without prejudice to the generality of subsection (8), the Ministers shall prescribe the form of the notice to be given under that subsection and the form shall specify —

- (a) the name and the address of the person claiming to be the owner of the copyright in the work concerned,
- (b) the statutory authority for the seizure,
- (c) the grounds that the person seizing the copies, articles or devices has for such seizure, and
- (d) a list of that which is seized.

(10) The owner of any copies, articles or devices seized under this section may apply to the District Court for the return of those copies, articles or devices.

(11) Rules of court shall be made under this section and the rules shall provide for procedures to enable applications to be made and dealt with in an expeditious manner.

(12) Where there has been an exercise of the right to seize and detain, conferred by subsection (1), the court may, on the application of a person aggrieved by it, award damages against a person who exercises that right as it considers just, on being satisfied that —

- (a) no infringement of copyright has been established, and
- (b) the person had no reasonable grounds for such seizure.

*Rights of owner of copyright
in respect of infringing copy*

134.—(1) Subject to the provisions of this Act, the owner of any copyright shall be entitled to all such rights and remedies, in respect of the conversion or detention by any person of—

- (a) infringing copies of a work,
- (b) articles that have been or are to be used to make infringing copies, or
- (c) protection-defeating devices,

as he or she would be entitled to if he or she were the owner of every such copy, article or device and had been the owner thereof since the time when it was made.

(2) Where by virtue of section 12(2) (which relates to successive conversions or detentions) of the Statute of Limitations, 1957, the title of the owner of the copyright to such a copy, article or device referred to in subsection (1) of this section would (if he or she had been the owner of the copy, article or device) have been extinguished on the expiration of the period referred to in the said subsection (2), he or she shall not be entitled to any rights or remedies under subsection (1) of this section in respect of anything done in relation to that copy, article or device after the expiration of that period.

(3) In awarding damages for conversion, the court shall take into account all the circumstances of the case and shall award such sum as it considers just.

Chapter 10 Rights and Remedies: Exclusive Licensee

Rights and remedies of exclusive licensee

135.—(1) An exclusive licensee has, except as against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) The rights and remedies of an exclusive licensee are concurrent with those of the copyright owner and references in sections 127 to 134 to the copyright owner shall be construed accordingly.

(3) In proceedings brought by an exclusive licensee under this section a defendant may avail of any defence which would have been available to the defendant if the action had been brought by the copyright owner.

Exercise of concurrent rights

136.—(1) Where an action for infringement of the copyright in a work brought by the copyright owner or an exclusive licensee relates, whether in whole or in part, 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 appropriate 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 under subsection (1) shall not be liable for any costs in an action unless he or she takes part in the proceedings.

(3) Nothing in this section shall affect the granting of interlocutory relief on an application by the copyright owner or exclusive licensee.

(4) Where an action for infringement of copyright is brought which relates, whether in whole or in part, to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action, then, the following shall apply —

- (a) in assessing damages the appropriate court shall have regard to —
 - (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 where an award of damages has been made, or an account of profits has been directed, in favour of one of them in respect of the infringement;
- (c) the appropriate court shall, where an account of profits is directed, apportion the profits between them as the court thinks fit, subject to any agreement between the copyright owner and the exclusive licensee.

(5) Subsection (4) shall apply whether or not the copyright owner and the exclusive licensee are both parties to the action.

(6) Before —

- (a) applying for an order for delivery up under section 131,
- (b) applying for an order to seize infringing copies, articles or devices under section 132, or
- (c) exercising the right to seize and detain conferred by section 133,

the copyright owners shall notify any exclusive licensee having concurrent rights and the court may, on the application of the licensee, make such order for delivery up, seizure of infringing copies, articles or devices or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right of seizure and detention as it thinks fit, having regard to the terms of the licence between the copyright owner and the exclusive licensee.

Chapter 11 **Remedies: Moral Rights**

Remedies for infringement of moral rights

137.—(1) An infringement of a right conferred by section 107, 109, 113 or 114 is actionable as a breach of statutory duty owed to the person entitled to the right concerned.

(2) A person may apply to the appropriate court for damages or other relief in respect of an infringement of a right conferred by section 107, 109, 113 or 114.

(3) In proceedings for infringement of the right conferred by section 109, the appropriate court may grant an injunction prohibiting any act unless a sufficient disclaimer is made, on such terms and in such a manner as is approved of by the court, dissociating the person entitled to the right from the treatment of the work.

Action in respect of construction of building

138. In any proceedings for infringement of a right conferred by section 107, 109 or 113 in respect of the construction of a building, no injunction or other orders shall be made—

- (a) after the construction of the building has begun, so as to prevent it from being completed, or
- (b) so as to require the building, in so far as it has been constructed, to be demolished.

Chapter 12 Presumptions

Presumptions

139.—(1) The presumptions specified in this section shall apply in any proceedings, whether civil or criminal, for infringement of the copyright in any work.

(2) Copyright shall be presumed to subsist in a work until the contrary is proved.

(3) Except as otherwise provided in this section, where the subsistence of the copyright in a work is proved or admitted, or is presumed under subsection (2), the plaintiff shall be presumed to be the owner or, as the case may be, the exclusive licensee of the copyright, until the contrary is proved. 1

(4) Where —

- (a) a name purporting to be that of the author of a work or of the owner or exclusive licensee of the copyright, as the case may be, appears on copies of the work, or
- (b) a copy of a work bears or incorporates a statement, label or other mark indicating that a person is the author of the work or the owner or exclusive licensee of the copyright, as the case may be,

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

(5) The person named or in respect of whom a statement, label or other mark appears on or is borne on or is incorporated in copies of a work in accordance with subsection (4) shall, unless the contrary is proved, be presumed not to have made the work —

- (a) in the course of employment referred to in section 23(1) (a),
- (b) in the course of employment as an officer or employee of a prescribed international organisation referred to in section 196,
- (c) in the course of employment as an officer or employee of the Government or of the State referred to in section 191,
- (d) under the direction or control of either or both of the Houses of the Oireachtas referred to in section 193, or
- (e) in circumstances in which the copyright in the work is conferred on another person by an enactment referred to in section 23(1) (d).

(6) Where a work purports to be a work of joint authorship, subsections (2), (3), (4) and (5) shall apply in relation to each person purporting to be one of the authors of the work.

(7) Where no name purporting to be that of the author of the work or of the owner or exclusive licensee of the copyright, as the case may be, appears on the work or where the work

does not bear or incorporate a statement, label or other mark in accordance with subsection (4) and—

- (a) the work qualifies for copyright protection by reference to the country, territory, state or area, in which it was first lawfully made available to the public, and
- (b) (i) a name purporting to be that of the person who first lawfully made available to the public the work appears on copies of the work as first so made available, or
 - (ii) copies of the work bear or incorporate a statement, label or other mark indicating that a named person first lawfully made available to the public the work,

then, that named person shall be presumed to have been the author of the work or the owner or exclusive licensee of the copyright, as the case may be, at the time when the work was first lawfully made available to the public, unless the contrary is proved.

(8) Where the author of the work is dead or the identity of the author cannot be ascertained by reasonable enquiry, it shall be presumed, unless the contrary is proved —

- (a) that the work is an original work, and
- (b) that the claims made by the plaintiff as to the date on which the work was first lawfully made available to the public and as to the country, territory, state or area in which the work was first so made available are correct.

(9) The presumptions set out in subsections (2) to (8) shall apply to the same extent in any actions relating to an infringement which occurred before the date on which copies of a work were first lawfully made available to the public.

Chapter 13 Offences: Copyright

Offences

140.—(1) A person who, without the consent of the copyright owner —

- (a) makes for sale, rental or loan,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, otherwise than for his or her private and domestic use,
- (d) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or
- (e) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the owner of the copyright,

a copy of a work which is, and which he or she knows or has reason to believe is, an infringing copy of the work, shall be guilty of an offence.

(2) In this section “loan” means a loan for reward and in particular does not include a loan to a family member or friend for private and domestic use, and “lends” shall be construed accordingly.

(3) A person who —

- (a) makes,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, or
- (d) has in his or her possession, custody or control,

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

(4) A person who —

- (a) (i) makes,
- (ii) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (iii) imports into the State, or
- (iv) has in his or her possession, custody or control, a protection-defeating device, knowing or having reason to believe that it has been or is to be used to circumvent rights protection measures, or
- (b) provides information, or offers or performs any service, intended to enable or assist a person to circumvent rights protection measures,

shall be guilty of an offence.

(5) Where copyright is infringed by —

- (a) the public performance of a literary, dramatic or musical work,
- (b) the playing or showing in public of a sound recording, artistic work, original database or film, or
- (c) broadcasting a work or including a work in a cable programme service,

the person who caused the work to be so performed, played, broadcast, included in a cable programme service or shown shall be guilty of an offence whether he rehearses it or had reason to believe that the copyright in the work would be infringed.

(6) An offence shall not be committed under subsection (1) or (5) by the undertaking of an act which under this Part may be undertaken without infringing the copyright in a work.

(7) A person guilty of an offence under subsection (1), (3) or (4) shall be liable —

- (a) on summary conviction, to a fine not exceeding £1,500 in respect of each infringing copy, article or device, or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

(8) A person guilty of an offence under subsection (5) shall be liable —

(a) on summary conviction, to a fine not exceeding £1,500 in respect of such offence or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

False claims of copyright

141. A person who, for financial gain, makes a claim to enjoy a right under this Part which is, and which he or she knows or has reason to believe is, false, shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

Order for delivery up in criminal proceedings

142.—(1) The court may, on conviction of a person or being satisfied that there is a *prima facie* case to answer, where the court is satisfied that at the time of the arrest or charge the person had in his or her possession, custody or control —

(a) in the course of a business, trade or profession, a copy of a work, knowing or having reason to believe it to be an infringing copy,

(b) an article specifically designed or adapted for making copies of a work, knowing or having reason to believe that it had been or was to be used to make infringing copies, or

(c) a protection-defeating device,

order that the infringing copy, article or device be delivered up to the copyright owner or to such other person as the court may direct.

(2) An order may be made by the court of its own motion, or on the application of the person bringing a prosecution, and may be made whether or not the person is convicted of the offence, but shall not be made —

(a) after the expiration of the periods specified in section 144(3) as being the limit of the period for delivery up, or

(b) where it appears to the court unlikely that any order will be made as to the disposal of the infringing copies, articles or devices.

(3) A person to whom an infringing copy, article or device is delivered up pursuant to an order made under this section shall retain it pending the making of a final order or decision not to make an order, as the case may be.

Search warrants and seizure

143.—(1) Where a judge of the District Court is satisfied by information on oath that there are reasonable grounds for suspecting —

- (a) that an offence under section 140 has been, or is about to be, committed in, on or at any premises or place, and
- (b) that evidence that such an offence has been, or is about to be, committed is in, on or at those premises or that place,

the court may issue a warrant authorising a member of the Garda Síochána, accompanied by such other members of the Garda Síochána or other person or persons as that member thinks proper, at any time or times within 28 days from the date of the issue of the warrant on production, where requested, of that warrant, to enter and search the premises or places specified in the warrant using reasonable force where necessary, and to do all or any of the following acts:

- (i) to seize any copies of any works, articles or devices in respect of which he or she has reasonable grounds for suspecting that an offence under section 140 has been or is about to be committed;
- (ii) to make an inventory or prepare other evidence of infringement of copyright or potential infringement of copyright;
- (iii) to seize anything found there which he or she believes on reasonable grounds may be required to be used in evidence in any proceedings brought in respect of an offence under this Act;
- (iv) to require any person found there to give his or her name and address.

(2) A warrant issued under this section may authorise persons, including the copyright owner or designated representative thereof, to accompany and assist any member of the Garda Síochána in executing the warrant or in collating any inventory or other evidence.

(3) A person who —

- (a) obstructs or interferes with a person acting under the authority of a warrant issued under this section,
- (b) is found in, on or at the premises or places specified in the warrant by a member of the Garda Síochána acting as aforesaid and who fails or refuses to give the member his or her name and address when required to do so or gives a name or address that is false or misleading,
- (c) obstructs the exercise of an authority conferred by a warrant under this section, or
- (d) fails or refuses to give information to a member of the Garda Síochána when requested to do so under this section,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or both.

Chapter 14 Delivery Up and Disposal

Period after which remedy for delivery up is not available

144.—(1) Subject to subsection (2), an application for an order under section 131 may not be made after the expiration of 6 years from the date on which the infringing copy, article or device was made.

(2) Where, during the whole or any part of the period referred to in subsection (1), the copyright owner —

- (a) is under a disability, or
- (b) is prevented by fraud or concealment from discovering the facts entitling him or her to apply for an order,

an application under section 131 may be made at any time before the expiration of 6 years from the date on which the applicant ceased to be under a disability, or, as the case may be, could, with reasonable diligence, have discovered those facts.

(3) An order for delivery up in criminal proceedings under section 142 shall not, in any case, be made after the expiration of 6 years from the date on which the proceedings under that section were initiated.

(4) Where, in any proceedings for an order for delivery up under section 131 or 142, the date of the making of the infringing copy, article or device is put into question by the defendant, the onus of proof shall be on the defendant that the infringing copy, article or device was made more than 6 years before the date on which an application for an order under section 131 was made or proceedings under section 142 were initiated.

Order as to disposal of infringing copy, article or device

145.—(1) An application may be made to the appropriate court for an order that an infringing copy, article or device —

- (a) delivered up under section 131 or 142, or
- (b) seized and detained under section 132 or 143,

shall be —

- (i) forfeited to the copyright owner, or
- (ii) destroyed or otherwise dealt with as the court may direct,

and the court may make such an order or such other order as it thinks fit.

(2) In considering what order, if any, should be made under subsection (1), the court shall consider whether other remedies available in an action for infringement of the copyright in a work would be adequate to compensate the copyright owner and to protect his or her interests.

(3) Provision shall be made by rules of the court as to the service of notice on persons having a n interest in the copies, articles or devices concerned, and any such person may —

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

(4) An order made under this section shall not take effect until the expiration of the period within which notice of an appeal may be given or, where before the expiration of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(5) Where there is more than one person interested in a copy, article or device, the court shall make such order as it thinks fit and may direct the copy, article or device to be sold or otherwise dealt with and any proceeds divided in accordance with the direction of the court.

(6) Where the court decides that no order shall be made under this section, the person who had the copy, article or device in his or her possession, custody or control immediately before it was delivered up or seized shall be entitled to its return.

(7) References in this section to a person having an interest in a copy, article or device include any person in whose favour an order may be made under this section in respect of the copy, article or device or under section 264 or under section 23 of the Trade Marks Act, 1996.

*Amendment to section 23
of Trade Marks Act, 1996*

146. Section 23 of the Trade Marks Act, 1996, is hereby amended by the substitution of the following subsection for subsection (6) of that section:

“(6) References in this section to a person having an interest in goods, material or articles include references to any person in whose favour an order could have been made under sections 145 and 264 of the Copyright and Related Rights Act, 2000.”.

Chapter 15
Provision for Preventing Importation

*Infringing copies, articles or devices
may be treated as prohibited goods*

147.—(1) The owner of the copyright in a work may give notice in writing to the Revenue Commissioners —

- (a) that he or she is the owner of the copyright in the work, and
- (b) that he or she requests the Revenue Commissioners for a period specified in the notice to treat as prohibited goods —
 - (i) copies of the work which are infringing copies,
 - (ii) articles specifically designed or adapted or used for making infringing copies of the work, or
 - (iii) protection-defeating devices.

(2) The period specified in a notice given under subsection (1) shall not exceed 5 years and in any case shall not extend beyond the period for which copyright is to subsist.

(3) The owner of the copyright in a work may give notice in writing to the Revenue Commissioners —

- (a) that he or she is the owner of the copyright in the work,
- (b) that infringing copies, articles or devices referred to in subsection (1) (b) are expected to arrive in the State at a time and a place specified in the notice, and
- (c) that he or she requests the Revenue Commissioners to treat those copies, articles or devices as prohibited goods.

(4) When a notice given under subsection (1) is in force the importation of goods to which the notice relates, other than copies of a work imported by a person for his or her private and domestic use, is prohibited.

(5) Notwithstanding subsection (4) or anything contained in the Customs Acts, a person is not, by reason of the prohibition, liable to any penalty under the Customs Acts other than forfeiture of the prohibited goods.

(6) In this section “prohibited goods” means counterfeit or pirated goods within the meaning of the European Communities (Counterfeit and Pirated Goods) Regulations, 1996 (S.I. No. 48 of 1996).

*Power of Revenue Commissioners
to make regulations*

148.—(1) The Revenue Commissioners may prescribe the form in which notice is to be given under section 147 and require a person giving notice —

- (a) to furnish the Revenue Commissioners with such evidence as may be prescribed, either on giving notice or when the goods are imported, or at both these times, and
- (b) to comply with such other conditions as may be prescribed.

(2) Regulations made under this section may require a person giving a notice under section 147 —

- (a) to pay such fees in respect of the notice as may be specified by the Revenue Commissioners from time to time,
- (b) to give such security as may be specified by the Revenue Commissioners in respect of any liability or expense which the Revenue Commissioners may incur in consequence of the notice given by reason of the detention of any infringing copy, article or device or anything done to any infringing copy, article or device detained, and
- (c) to indemnify the Revenue Commissioners against any such liability or expense whether security has been given or not.

(3) Regulations made under this section may make different provisions in respect of different classes of case to which they apply and may include such incidental and supplementary provisions as the Revenue Commissioners consider expedient from time to time.

(4) Any fees paid pursuant to regulations made under this section shall be accounted for in such manner as shall be prescribed by the Minister for Finance.

Chapter 16 **Copyright Licensing**

Licensing schemes and licensing bodies

149.—(1) In this Part —

“licences” means licences to undertake or authorise the undertaking of any of the acts restricted by copyright;

“licensing body” means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, either as owner or prospective owner of copyright, or as exclusive licensee, or as agent for him or her, of copyright licences, and whose objects include the granting of licences relating to works of more than one copyright owner;

“licensing scheme” means a scheme specifying —

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf that operator 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 any thing in the nature of a scheme, whether described as a scheme or as a tariff for any other name.

(2) References in this Part to licences or licensing schemes relating to works of more than one copyright owner shall not include licences or schemes relating to —

- (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, including holding companies and their subsidiaries.

REFERENCES AND APPLICATIONS RELATING TO LICENSING SCHEMES

General references

150. Sections 151 to 156 apply to licensing schemes which are operated by licensing bodies in relation to the copyright in works of more than one copyright owner, in so far as they relate to licences for any of the acts restricted by copyright under section 37.

Reference of proposed licensing scheme to Controller

151.—(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Controller by an organisation which claims to be representative of persons who claim that they require licences in cases of a description to which the scheme would apply.

(2) The Controller shall not consider a reference by an organisation under subsection (1) unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) The Controller may refuse to consider a reference under subsection (1) on the ground that the reference is premature.

(4) Where the Controller decides to consider a reference under subsection (1), he or she shall consider the subject matter of the reference and make an order, either confirming or varying the proposed scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

Reference of licensing scheme to Controller

152.—(1) Where a licensing scheme is in operation and a dispute arises with respect to the scheme between the operator of the scheme and —

- (a) a person claiming that he or she requires a licence in a case of a description to which the scheme applies, or
- (b) an organisation claiming to be representative of such persons,

that operator, person or organisation may refer the scheme to the Controller in so far as it relates to cases of that description.

(2) The Controller shall not consider a reference by an organisation under subsection (1) unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) A scheme which has been referred to the Controller under subsection (1) shall remain in operation until proceedings in relation to the reference are concluded.

(4) The Controller shall consider the matter referred to him or her and shall make an order, confirming or varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

Further reference of scheme to Controller

153.—(1) Where the Controller has, in respect of a licensing scheme under section 151 or 152 or under this section, made an order in respect of a scheme, and the order remains in force, the person to whom this section applies may refer the scheme to the Controller in so far as it relates to cases of that description. n

(2) This section applies to —

- (a) the operator of the scheme,
- (b) a person claiming that he or she requires a licence in a case of the description to which the order applies, and
- (c) an organisation claiming to be representative of the persons referred to in paragraph (b).

(3) Where an order under section 151 or 152 or this section is in force, the licensing scheme in respect of which the order is made shall not, except with the special leave of the Controller, be referred to the Controller in respect of the same description of cases —

- (a) within 12 months from the date of the order in respect of the previous reference, or
- (b) where the order was made so as to be in force for 15 months or less, until the last 3 months before the expiration of the order.

(4) A scheme which has been referred to the Controller under subsection (1) shall remain in operation until proceedings in relation to the reference are concluded.

(5) The Controller shall consider the matter referred to him or her and shall make an order, confirming, varying or further varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(6) An order under subsection (5) may be made for such period as the Controller may determine.

*Application for grant of licence
in connection with licensing scheme*

154.—(1) A person who claims, in a case to which a licensing scheme relates, that the operator of the scheme has refused to grant or to procure the grant to him or her of a licence in accordance with the scheme, or has failed to do so within a reasonable period, may apply to the Controller for an order under subsection (4).

(2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme —

- (a) has refused to grant or to procure the grant to him or her of a licence, or has failed to do so within a reasonable period and that in the circumstances it is unreasonable that a licence should not be granted, or
- (b) proposes terms for a licence that are unreasonable,

may apply to the Controller for an order under subsection (4).

(3) A case shall be regarded as being excluded from a licensing scheme for the purposes of subsection (2) where —

- (a) the scheme provides for the grant of licences, subject to terms excepting matters from the licence and the case is 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) Where the Controller is satisfied that a claim under this section is well-founded, he or she 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 Controller may determine to be applicable in accordance with the scheme, or as the case may be, to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

Review of orders made by Controller

155.—(1) Where the Controller has made an order under section 154 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 Controller for a review of that order.

(2) An application under subsection (1) shall not be made except with the special leave of the Controller —

- (a) within 12 months from the date of the order or of the decision on a previous application under this section, or
- (b) where—
 - (i) the order was made so as to be in force for 15 months or less, or
 - (ii) as a result of the decision on a previous application under this section the order is due to expire within 15 months of that decision, until the last 3 months before the expiration date.

(3) The Controller shall, on an application for review, confirm or vary his or her order as the Controller 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 Controller
as to licensing scheme*

156.—(1) A licensing scheme which has been confirmed or varied by the Controller under section 151, 152 or 153 shall be in operation or, as the case may be, remain in operation, in so far as it relates to the description of case in respect of which the order was made, for such period as the order remains in force.

(2) Where an order made by the Controller under section 151, 152 or 153 confirming or varying a licensing scheme is in force (in this section referred to as “an order to which this section applies”), a person who, in a case of a class to which the order applies —

- (a) pay to the operator of the scheme any charges payable under the scheme in respect of a licence applying to the case concerned or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and
- (b) complies with the other terms applicable to the licence under the scheme,

is in the same position as regards infringement of copyright as if he or she had at all material times been the holder of a licence granted by the owner of the copyright concerned in accordance with the scheme.

(3) Subject to subsection (4), the Controller may direct that an order to which this section applies, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference was made, or where later, the date on which the scheme came into operation.

(4) Where a direction is made under subsection (3) —

- (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 payable by virtue of the order.

(5) A direction shall not be made under this section where subsection (6) applies.

(6) An order of the Controller made under section 152 or 153 in relation to a scheme which is certified for any purpose under section 173 has effect, insofar as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Controller.

(7) Where the Controller has made an order under section 154 and the order remains in force, the person in whose favour the order is made, where he or she —

- (a) pay to the operator of the scheme any charges payable in accordance with the order, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and
- (b) complies with the other terms specified in the order,

is in the same position as regards infringement of copyright as if he or she had at all material times been the holder of a licence granted by the owner of the copyright concerned on the terms specified in the order.

REFERENCES AND APPLICATIONS RELATING TO LICENSING BY LICENSING BODIES

General references by licensing bodies

157. Sections 158 to 161 apply to licences in relation to the copyright in works of more than one copyright owner, granted by a licensing body otherwise than pursuant to a licensing scheme, insofar as the licences relate to any of the acts restricted by copyright under section 37.

Reference to Controller of proposed licence

158.—(1) The terms on which a licensing body proposes to grant a licence may be referred to the Controller by the prospective licensee for an order under subsection (3).

(2) The Controller may refuse to consider a reference under subsection (1) on the ground that the reference is premature.

(3) Where the Controller decides to consider a reference under subsection (1), he or she shall consider the terms of the proposed licence and make an order, confirming or varying the terms, as the Controller may determine to be reasonable in the circumstances.

(4) An order under subsection (3) may be made for such period as the Controller may determine.

Reference to Controller of expiring licence

159.—(1) A licensee under a licence which is due to expire with the passage of time or as a result of notice given by the licensing body may apply to the Controller on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) An application under subsection (1) may be made at any time during the last 3 months before the expiration of the licence.

(3) A licence in respect of which a reference has been made to the Controller under subsection (1) shall remain in force until proceedings in relation to the reference are concluded.

(4) Where the Controller is satisfied that an application made under subsection (1) is well-founded, he or she shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Controller may determine to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

*Application for review
of order made by Controller*

160.—(1) Where the Controller has made an order under section 158 or 159, the licensing body or the person entitled to the benefit of the order may apply to the Controller for a review of that order.

(2) An application under subsection (1) shall not be made except with the special leave of the Controller —

(a) within 12 months from the date of the order or of the decision on a previous application under this section, or

(b) where—

(i) the order was made so as to be in force for 15 months or less, or

(ii) as a result of the decision on a previous application under this section, the order is due to expire within 15 months of that decision, until the last 3 months before the expiration date.

(3) The Controller shall, on an application for review, confirm or vary his or her order as the Controller may determine to be reasonable in the circumstances.

Effect of order of Controller as to licence

161.—(1) Where the Controller has made an order under section 158 or 159, and the order remains in force, the person entitled to the benefit of the order, where he or she —

- (a) pays to the licensing body any charges payable in accordance with the order or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and
- (b) complies with the other terms specified in the order,

is in the same position as regards infringement of copyright as if he or she had at all material times been the holder of a licence granted by the owner of the copyright concerned on the terms specified in the order.

(2) The benefit of an order made under section 158 or 159 may be assigned —

- (a) in the case of an order made under section 158, where assignment is not prohibited under the terms of the order of the Controller, and
- (b) in the case of an order made under section 159, where assignment was not prohibited under the terms of the original licence.

(3) The Controller may direct that an order made under section 158 or 159 or an order made under section 160 varying such an order, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference or application was made or, where later, the date on which the licence was granted or, as the case may be, was due to expire.

(4) Where a direction is given under subsection (3) —

- (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 further order, as a reference to the charges so payable by virtue of that further order.

LICENSING: MISCELLANEOUS

General considerations: unreasonable discrimination

162.—(1) In determining what is reasonable, on a reference or application under this Chapter relating to a licensing scheme or licence, the Controller 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 his or her powers so as to ensure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or

application relates and licensees under other schemes operated by, or other licences granted by, the same person.

(2) Subsection (1) shall not affect the obligation of the Controller in any case to have regard to all relevant circumstances.

Licences for reprographic copying

163. Where a reference or application is made to the Controller under this Chapter relating to the licensing of reprographic copying of literary, dramatic, musical or artistic works, original databases, or of the typographical arrangement of published editions, which have been lawfully made available to the public, the Controller shall have regard to —

- (a) the extent to which copies of the works concerned 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.

*Licences to reflect payments
in respect of underlying rights*

164. Where a reference or an application is made under this Chapter in relation to licensing of the copyright in a work, the Controller shall take into account, in considering what charges are to be paid for a licence, any payments which the owner of the copyright is liable to make pursuant to the granting of the licence, or pursuant to the acts authorised by the licence—

- (a) to owners of the copyright in works included in the work, or
- (b) in respect of any performance, included in the work.

*Licences to reflect conditions imposed
by promoters of events*

165.—(1) Where a reference or an application is made under this Chapter relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes which include, or are to include, any entertainment or other event, the Controller shall have regard to any conditions imposed by the promoters of the entertainment or other event, and in particular the Controller shall not consider a refusal or failure to grant a licence to be unreasonable where it could not have been granted in a manner which is consistent with those conditions.

(2) Nothing in this section shall require the Controller to have regard to any conditions where those conditions —

- (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 sound recording, film, broadcast or cable programme.

*Licences in respect of works
included in retransmissions*

166.—(1) This section applies to references or applications under this Chapter relating to licences to include a work in a broadcast or cable programme service, where one broadcast or cable programme (in this section referred to as the “first transmission”) is, by reception and immediate retransmission without alteration, to be further broadcast or included in a cable programme service (in this section referred to as the “further transmission”).

(2) In so far as the further transmission is to the same area as the first transmission, the Controller shall, in considering what charges, if any, are to 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 the owner in respect of transmissions to that area. t

(3) In so far as the further transmission is to an area outside that to which the first transmission was made, the Controller shall disregard all further transmissions in considering what charges, if any, are to be paid for licences for the first transmission.

*Implied indemnity in certain schemes
and licences for reprographic copying*

167.—(1) This section applies to —

- (a) schemes for licensing reprographic copying of literary, dramatic, musical or artistic works, original databases, or of the typographical arrangement of published editions, lawfully made available to the public, and
- (b) licences granted by licensing bodies for such copying,

where the scheme or licence concerned does not specify the work to which it applies with sufficient particularity so as to enable a licensee to determine whether a work is within the scheme or licence by inspection of the scheme or licence and the work.

(2) There is implied in every scheme or licence to which this section applies —

- (a) an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme, and
- (b) an undertaking by the licensing body to indemnify a licensee,

against any liability incurred by a person or licensee by reason of his or her having infringed copyright by making or authorising the making of reprographic copies of a work in circumstances within the apparent scope of the licence.

*Power to extend application
of scheme or licence*

168.—(1) This section applies to —

- (a) a licensing scheme to which sections 151 to 156 apply, insofar as they provide for the grant of licences, or
- (b) a licence to which sections 158 to 161 apply,

insofar as the scheme provides for the grant of licences, or the licence is a licence which authorises the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of literary, dramatic, musical or artistic works, original databases or of the typographical arrangement of published editions, which have been lawfully made available to the public.

(2) Where it appears to the Minister 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 those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or prejudice the interests of the owner of the copyright,

the Minister may by order provide that the scheme or licence shall extend to those works.

(3) Where the Minister proposes to make an order under subsection (2), he or she shall give notice of the proposal to —

- (a) the owner of the copyright,
- (b) the licensing body concerned, and
- (c) such persons or organisations representative of educational establishments, and such other persons or organisations, as the Minister thinks fit.

(4) Where the identity of a person, body or organisation required to be given notice under subsection (3) cannot be ascertained by reasonable enquiry, an advertisement published by the Minister in *Iris Oifigiúil* [Official Journal of the Government] and at least two newspapers circulating in the State specifying details of the proposal to extend the scheme or licence shall be deemed to be notice for the purposes of that subsection.

(5) A notice given under subsection (3) shall inform the persons referred to in that subsection of their right to make oral or written representations to the Minister concerning the proposal within 6 months from the date of the notice, and where any of those persons wishes to make oral representations, the Minister shall appoint a person to hear the representations and to report to the Minister.

(6) In considering whether to make an order under subsection (2), the Minister shall take into account any representations made to him or her under subsection (5) and such other matters as appear to the Minister to be relevant.

*Variation or discharge of order
extending scheme or licence*

169.—(1) The owner of the copyright in a work in respect of which an order is in force under section 168 may apply to the Minister for the variation or discharge of the order, stating his or her reasons for making the application.

(2) The Minister shall not consider an application made within 2 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 the Minister that the circumstances are exceptional.

(3) The Minister may confirm the order concerned and where the Minister refuses to confirm the order, he or she shall give notice of the application to —

- (a) the licensing body concerned, and
- (b) such persons or organisations representative of educational establishments, and such other persons or organisations, as the Minister thinks fit.

(4) A notice given under subsection (3) shall inform the persons referred to in that subsection of their right to make written or oral representations to the Minister concerning the application under subsection (1) within 2 months from the date of the notice, and where any of those persons wish to make oral representations, the Minister shall appoint a person to hear the representations and to report to the Minister.

(5) In considering an application under subsection (1), the Minister shall take into account the reasons for the application, any representations made to him or her under subsection (4) and such other matters as appear to the Minister to be relevant.

(6) The Minister may make such order as he or she thinks fit confirming or discharging the order or, as the case may be, the order as previously varied, or varying or further varying the order so as to exclude works from it.

Appeals against orders

170.—(1) The owner of the copyright in a work which is the subject of an order made under section 168 may appeal to the High Court 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 matters referred to in section 168(2).

(2) Where the Minister has made an order under section 169 —

- (a) the person who applied for the order, or

- (b) any person or organisation representative of educational establishments, or any other persons or organisations as the Minister thinks fit, who were given notice of the application for the order and who made representations under subsection (4) of that section,

may appeal to the High Court, which may confirm, vary or discharge the order.

(3) An appeal under this section shall be brought within 6 weeks of the making of the order, or such further period as the High Court may allow.

(4) An order made under section 168 or 169 shall not come into force until the expiration of 6 weeks from the making of the order or, where an appeal is brought before the expiration of that period, until the appeal proceedings are disposed of or withdrawn.

(5) Where an appeal is brought on or before the expiration of the period specified in subsection (4), any decision of the High Court on the appeal shall not affect the validity of anything done in reliance on the order before that decision takes effect.

Inquiry whether other provisions required

171.—(1) The Minister may appoint a person to inquire whether other provisions are 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 literary, dramatic, musical or artistic works, original databases, or of the typographical arrangement of published editions, which —

- (a) have been lawfully made available to the public, and
 (b) are of a description which appears to the Minister —
 (i) not to be regulated by an existing licensing scheme or general licence, and
 (ii) not to be within the power conferred by section 168.

(2) The Minister may prescribe procedures for the establishment and conduct of an inquiry under this section and without prejudice to the generality of the aforesaid may prescribe that —

- (a) notice be given to persons or organisations appearing to the Minister to represent the owners of the copyright in works of that description,
 (b) notice be given to persons or organisations appearing to the Minister to represent educational establishments, or
 (c) written or oral representations may be made by those persons.

(3) Where procedures are prescribed under subsection (2), they shall not affect the rights of any other person to be given notice of such inquiries or the making of representations by other persons or organisations.

(4) The person appointed to hold an inquiry under this section shall not recommend the making of other provisions unless she or he is satisfied that —

- (a) it would be of advantage to educational establishments to be authorised to make reprographic copies of the works concerned, and
- (b) making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or prejudice the interests of the owner of the copyright.

(5) Where a person appointed to hold an inquiry under this section recommends the making of other provisions, he or she shall specify any terms, other than terms as to the charges payable, on which licences under those provisions shall be available.

*Statutory licence where recommendation
not implemented*

172.—(1) The Minister may, within one year of the making of a recommendation under section 171, by order provide, that where the provision to which subsection (2) applies has not been made pursuant to 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 deemed to be licensed by the owners of the copyright in the works.

(2) For the purposes of subsection (1), provisions shall be regarded as having been made pursuant to the recommendation where —

- (a) a certified licensing scheme has been established under which a licence is available to the establishment concerned, or
- (b) a general licence has been —
 - (i) granted to or for the benefit of that establishment,
 - (ii) referred by or on behalf of that establishment to the Controller under section 158, 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) An existing licence authorising the making of the copies referred to in subsection (1) (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 restrictive or more onerous than the licence provided for by an order made under subsection (1).

(4) An order made under subsection (1) shall provide that the licence be free of any charge and, in relation to other matters, shall be subject to any terms specified in the recommendation and to such other terms as the Minister may think fit.

(5) Where a copy which would otherwise be an infringing copy is made pursuant to a licence provided for by an order made under subsection (1) and is subsequently sold, rented or

lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

(6) An order made under subsection (1) shall come into operation not less than 6 months after it is made and, subject to subsection (7), the order may be varied from time to time.

(7) An order made under subsection (1) shall not be varied so as to include works other than those to which the recommendation relates or to remove any terms specified in the recommendation.

(8) In this section, “certified licensing scheme” means a licensing scheme certified under section 173 for the purposes of this section.

Certification of licensing schemes

173.—(1) A person operating or proposing to operate a licensing scheme may apply to the Minister to certify the scheme for the purposes of section 56, 57 or 172.

(2) The Minister may by order certify a licensing scheme where he or she is satisfied that—

- (a) the licensing body in charge of the scheme is representative of a substantial number of rightsholders in the category of works to which the scheme is designed to apply, and
- (b) the scheme sets out clearly the charges payable and the other terms and conditions on which licences are to be granted.

(3) The scheme shall be set out in an order made under subsection (2) and the certification shall come into operation for the purposes of section 56, 57 or 172 as the case maybe —

- (a) on a date, specified in the order, not less than 8 weeks after the order is made, or
- (b) where the scheme is the subject of a reference under section 151, on any later date on which the order of the Controller under that section comes into force, or the reference is withdrawn.

(4) A variation of the scheme to which this section applies is not effective unless a corresponding amendment of the order is made and the Minister shall make such an amendment in the case of a variation ordered by the Controller on a reference under section 151, 152 or 153 and may do so in any other case where the Minister thinks fit.

(5) An order made under subsection (2) shall be revoked where the scheme ceases to operate and may be revoked where it appears to the Minister that the scheme is no longer being operated in accordance with the terms of the order.

CABLE RETRANSMISSIONS

*Collective exercise of certain rights
in relation to cable retransmissions*

174.—(1) The owner of the copyright in a literary, dramatic, musical or artistic work, an original database, a sound recording or a film shall have the right to grant or refuse authorisation for cable retransmission of a broadcast or cable programme from another Member State of the EEA in which the work is included.

(2) The right conferred by this section shall be known and in this section referred to as the “cable retransmission right”.

(3) The cable retransmission right may be exercised against a cable programme service provider only through a licensing body.

(4) Where the owner of the copyright in a work has not transferred his or her cable retransmission right to a licensing body, the licensing body which manages rights of the same category shall be deemed to be permitted to manage his or her right.

(5) Where more than one licensing body manages cable retransmission rights, the owner of the copyright in a work may choose which of them is deemed to be permitted to manage his or her right.

(6) The owner of the copyright in a work to whom subsection (4) or (5) applies has the same rights and obligations resulting from any relevant agreement between the cable programme service provider and the licensing body as copyright owners who have transferred their cable retransmission right to that licensing body.

(7) Any rights to which the owner of the copyright in a work may be entitled under subsection (6) shall be exercised within the period of 3 years commencing on the date of the cable retransmission concerned.

(8) This section shall not affect any rights exercisable by the maker of a broadcast, whether in relation to the broadcast or a work included therein.

(9) In this section, “cable retransmission” means the reception and immediate retransmission without alteration by way of a cable programme service of a broadcast or of a cable programme initially transmitted from another Member State of the EEA.

Chapter 17
Registration of Copyright Licensing Bodies

Register of copyright licensing bodies

175.—(1) The Controller shall establish and maintain a register of copyright licensing bodies in such form and manner and containing such particulars as the Minister may prescribe to be known as the “Register of Copyright Licensing Bodies” and referred to in this Part as the “Register”.

(2) The Controller shall keep the Register in such forms so that the Register is capable of being used to make a copy of any entry in the Register.

(3) The Registers shall be kept at such place as may be prescribed by the Minister and, subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance —

- (a) the Registers shall be made available for inspection by a person at such times and in such manner as may be prescribed by the Minister, and
- (b) where a request is made to the Controller for a certified or uncertified copy of, or extract from, an entry in the Register, the Controller shall issue a copy of the entry or extract to the applicant.

(4) An application for registration or renewal of a registration of a licensing body shall be made to the Controller in such form and manner as may be prescribed by the Minister and shall be subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance.

(5) The Controller shall register an applicant or renew a registration where the Controller is satisfied that —

- (a) the applicant complies with the definition of a licensing body specified in section 38 or 149, and
- (b) the applicant has provided such information and satisfied such conditions as may be prescribed by the Minister for the purposes of registration.

(6) The information prescribed under paragraph (b) of subsection (5) and supplied by the applicant for registration shall be placed on the Register, and applicants may apply to the Controller to have such information revised from time to time as circumstances may require.

(7) The information to be prescribed by the Minister under subsection (5) (b) shall include, as appropriate, the following —

- (a) the name of the applicant;
- (b) the address of the applicant;

- (c) the names of the chairperson and other members of the board or officers, or names of partners, as the case may be, of the applicant;
- (d) a copy of the memorandum and articles of association, or partnership agreement, as the case may be, of the applicant;
- (e) details of the scheme;
- (f) details of the scales of charges or proposed charges to be levied by the applicant;
- (g) the class of rights owners represented or proposed to be represented by the applicant; and
- (h) in the case of a licensing body within the meanings specified in section 38, the names of the rightsholder or rightsholders in respect of whom the body concerned claims entitlement to receive payments under that section.

(8) On the registration or renewal of a registration of a licensing body, the Controller shall issue to the applicant a certificate of registration in such form as the Controller shall determine.

*Proof that licensing body may act
on behalf of specified classes*

176. A certificate granted under section 175(8) shall include the particulars specified in subsection (7) of that section and the certificate shall be evidence of the right of the licensing body, until the contrary is proved, to act on behalf of the classes of rights owners for whom it claims representation rights or on behalf of the rights owners who have assigned rights to it, or exclusively licensed it, as specified in that certificate.

Notification of charges

177.—(1) A licensing body registered under this Part which proposes to impose a charge, otherwise than in accordance with the scales of charges included in an application for registration or for renewal of a registration, shall provide the Controller in writing with details of the proposed charge not less than one month before the charge comes into effect.

(2) The registration of a licensing body which fails to comply with subsection (1) is deemed to be cancelled from the date on which the proposed charge comes into effect.

Validity of certificates of registration

178.—(1) A certificate of registration issued under section 175(8) shall be valid for 12 months from the date of registration or such lesser period as may be specified by the Controller in the certificate.

(2) Subject to section 175(4), a licensing body registered under this Part may apply for renewal of its registration for further periods each of which shall not exceed 12 months.

(3) An application for renewal of a registration shall be made not less than one month before the expiration of the period of validity of the certificate of registration.

(4) A term of renewal of a registration shall take effect from the expiration of the previous registration.

Refusal of application

179.—(1) The Controller may refuse an application for renewal of a registration by a licensing body registered under this Part or cancel the registration of a licensing body where the body no longer fulfils the requirements specified in section 175(5).

(2) The Controller shall remove a licensing body from the Register where its application for renewal of its registration is refused or its registration is cancelled.

Indemnity for Controller

180. No action or other proceedings shall lie or be maintainable against the Controller (except in the case of wilful neglect of duty) in respect of anything done or omitted to be done by him or her in the *bona fide* exercise of any functions, powers or duties conferred or imposed by or under this Chapter.

Obligation of collecting societies to register (copyright)

181.—(1) Any body operating as a licensing body within the meaning specified in section 38 or 149 shall be obliged to register in accordance with the provisions of this Chapter, and to remain registered for so long as it continues to operate in this capacity.

(2) Any body to which the provisions of subsection (1) applies which —

- (a) fails within six months of the commencement of this Chapter to register under the terms of this Chapter,
- (b) fails within 2 months of its establishment in the case of a body established after the commencement of this Chapter, to register under the terms of this Chapter, or
- (c) continues to operate as such a body having been removed from the Register for any reason,

shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) shall be liable —

- (a) on summary conviction, to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

Chapter 18 Qualification for Copyright Protection

Qualification for copyright protection: general

182.—(1) Copyright shall not subsist in a work unless the qualification requirements of this Chapter are satisfied in relation to —

- (a) the author in section 183,
- (b) the country, territory, state or area in which the work was first lawfully made available to the public in section 184,
- (c) in the case of a broadcast or cable programme, the country, territory, state or area from which the broadcast was made or from which the programme was sent in section 186.

(2) Subsection (1) shall not apply in relation to the Government or the Oireachtas or to the copyright of prescribed international organisations.

(3) Where the qualification requirements specified in this Chapter or in section 191, 193 or 196 are satisfied on one occasion in relation to a work, the copyright in the work shall not cease to subsist by reason of any subsequent event.

Qualification by reference to author

183.—(1) A work shall qualify for copyright protection where the author was at the material time a qualifying person.

(2) For the purposes of this Part, a qualifying person shall be —

- (a) an Irish citizen;
- (b) a citizen or subject of, or an individual domiciled or ordinarily resident in the State, or in any country, territory, state or area to which the relevant provisions of this Part extend;
- (c) a body incorporated under the law of the State or of any country, territory, state or area to which the relevant provisions of this Part extend;
- (d) a partnership or unincorporated body formed under the law of the State or of any country, territory, state or area to which the relevant provisions of this Part extend; or
- (e) any other body in the State or of any country, territory, state or area to which the relevant provisions of this Part extend.

(3) Where provision is made by order under section 188, a work shall also qualify for copyright protection where at the material time the author was —

- (a) a citizen or subject of, or an individual domiciled or ordinarily resident in a country, territory, state or area to which the order relates;

- (b) a body incorporated under the law of a country, territory, state or area to which the order relates;
- (c) a partnership or unincorporated body formed under the law of any country, territory, state or area to which the order relates; or
- (d) any other body in any country, territory, state or area to which the order relates.

(4) Subject to subsection (5), a work of joint authorship shall qualify for copyright protection where at the material time any of the authors satisfies the requirements specified in subsection (1), (2) or (3).

(5) Where a work of joint authorship qualifies for copyright protection only under this section, only those authors who satisfy those requirements shall be taken into account for the purposes of —

- (a) section 23(1) (a) (first ownership of copyright; entitlement of author or author's employer);
- (b) section 24 (duration of copyright in a literary, dramatic, musical or artistic work or an original database); and
- (c) section 88 (anonymous and pseudonymous works: acts permitted), with reference to section 2 (definition of "anonymous work" and definition of "pseudonymous work"), section 2(7) and (8) (deemer of authorship to be known), and section 33 (expiry of copyright).

(6) The material time in relation to a literary, dramatic, musical or artistic work or an original database, shall be —

- (a) in the case of a work which has not been lawfully made available to the public when the work was made or, where the making of the work extended over a period, a substantial part of that period; or
- (b) in the case of a work which has been lawfully made available to the public, when the work was first lawfully made available to the public or, where the author had died before that time, immediately before his or her death.

(7) The material time in relation to other descriptions of work shall be as follows:

- (a) in the case of a sound recording or film, when the sound recording or film was made;
- (b) in the case of a broadcast, when the broadcast was made;
- (c) in the case of a cable programme, when the programme was first lawfully included in a cable programme service;
- (d) in the case of the typographical arrangement of a published edition, when the edition was first lawfully made available to the public.

*Qualification for copyright protection:
specific*

184.—(1) A literary, dramatic, musical or artistic work, sound recording, film, typographical arrangement of a published edition or an original database, shall qualify for copyright protection where it is first lawfully made available to the public —

- (a) in the State; or
- (b) in any country, territory, state or area to which the relevant provision of this Part extends.

(2) For the purposes of this section, lawfully making available to the public a work in one country, territory, state or area shall be deemed to be the first lawful making available to the public of the work even where the work is simultaneously lawfully made available to the public elsewhere; and for this purpose, lawfully making available to the public of a work elsewhere within the previous 30 days shall be deemed to be simultaneous.

Territorial waters and Continental Shelf

185. For the purposes of this Part —

- (a) acts undertaken in, on, under or over —
 - (i) the waters in the portion of the sea which comprises the territorial seas of the State,
 - (ii) the waters in all areas of the sea to which the internal or inland waters of the State are extended by section 5 of the Maritime Jurisdiction Act, 1959, and
 - (iii) the waters in any area which is for the time being a designated area within the meaning of section 1 of the Continental Shelf Act, 1968,
 and
- (b) acts undertaken on an Irish ship, aircraft or hovercraft registered under the laws of the State,

shall be deemed to have been undertaken in the State.

*Qualification for copyright
in broadcasts and cable programmes*

186. A broadcast shall qualify for copyright protection where it is lawfully made from, and a cable programme shall qualify for copyright protection where it is first sent from a place—

- (a) in the State, or
- (b) in any country, territory, state or area to which the relevant provisions of this Part extend.

*Prohibition on contravention
of certain international obligations*

187. The Government shall not exercise the power to make regulations provided for by section 190, in relation to a country, territory, state or area in contravention of obligations entered into under any bilateral or multilateral copyright or related rights convention to which the State is a party or of any obligations incurred by the State pursuant to the EEA Agreement.

Extension of this Part by order

188.—(1) The Government may make an order to extend the provisions of this Part and, in particular, the provisions as to qualification of works for copyright protection in sections 183, 184 and 186, to any convention country, territory, state or area.

(2) The effect of the extension of copyright protection specified in subsection (1), may where so stated in the Third Schedule, apply to a specified part or parts of the international multilateral agreement, treaty or convention in question.

(3) The Government may, by order, add to or delete from the list of agreements, international multilateral agreements, treaties or conventions contained in the Third Schedule, or specify such part or parts of the said multilateral agreements, treaties or conventions to which the extension of protection shall apply in accordance with the terms of subsection (2), having regard to the obligations of the State under relevant multilateral agreements, treaties and conventions.

(4) The effect of the extension of the provisions of sections 183, 184 and 186 relating to qualification of works for copyright protection under the terms of this section shall be that works qualifying for copyright protection by reference to their authors or geographical provenance under the equivalent provisions of the law of a country, territory, state or area party to an agreement, treaty or convention named in the Third Schedule shall qualify for copyright protection under Irish law, to the same degree as if they (those works) had qualified for such protection directly under sections 183, 184 and 186.

(5) For the purposes of this section, “convention country, territory, state or area” means a convention country, territory, state or area which is a party to a multilateral agreement, treaty or convention relating to copyright to which the State is also a party, and which is specified in the Third Schedule.

*Order to be made for countries
other than convention countries, etc.*

189.—(1) The Government may by order make provision for applying in relation to a country, territory, state or area, other than a convention country, territory, state or area within the meaning of section 188(5), all or any of the provisions of this Part specified in the order, so as to secure that those provisions apply in relation to —

- (a) individuals who are citizens or subjects of, or who are domiciled or ordinarily resident in, that country, territory, state or area as they apply to persons who are domiciled or ordinarily resident in the State,
- (b) bodies incorporated under the law of that country, territory, state or area as they apply in relation to bodies incorporated under the law of the State,
- (c) partnerships or unincorporated bodies formed under the law of that country, territory, state or area as they apply in relation to partnerships or unincorporated bodies formed under the law of the State,
- (d) any other bodies in that country, territory, state or area as they apply in relation to such bodies in the State,
- (e) literary, dramatic, musical or artistic works, sound recordings, films, typographical arrangement of a published edition or original database first made available to the public in that country, territory, state or area as they apply in relation to such works first made available to the public in the State, or
- (f) broadcasts made from or cable programmes sent from that country, territory, state or area as they apply in relation to broadcasts made from or cable programmes sent from the State.

(2) An order made under this section may make provision for all or any of the matters referred to in subsection (1) and may —

- (a) apply any provision 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) The Government shall not make an order under this section in relation to a country, territory, state or area unless satisfied that provision has been or will be made under the law of that country, territory, state or area, in respect of the class of works to which the order relates, giving adequate protection to the owners of copyright under this Part.

(4) The Government may by order revoke or amend any order made under this section, including an order under this subsection.

Restriction of rights by order

190.—(1) Where the protection of Irish copyright law has been extended to a country, territory, state or area under the provisions of section 189, and it appears to the Government that Irish works or one or more classes of those works are not adequately protected in that country, territory, state or area, the Government may by order restrict the rights conferred by this Part in relation to works of authors connected with that country, territory, state or area.

(2) In an order made under subsection (1), the Government shall designate the country, territory, state or area concerned and provide that, for the purposes specified in that order, a work shall not qualify for copyright protection after the date specified in the order where that work is made at a time when the author is —

- (a) a citizen or subject of that country, territory, state or area (who is not at the same time domiciled or ordinarily resident in the State),
- (b) a body incorporated under the law of that country, territory, state or area,
- (c) a partnership or unincorporated body formed under the law of that country, territory, state or area, or
- (d) any other body of that country, territory, state or area,

and the order may make such provision for all the purposes of this Part or for such purposes as are specified in that order, and either generally or in relation to such class or classes of cases as are specified in that order, having regard to the nature and extent of the deficiency of protection referred to in subsection (1).

(3) In this section “Irish works” means works of which the author was at the material time within the meaning of section 183.

Chapter 19 Government and Oireachtas Copyright

Government copyright

191.—(1) Where a work is made by an officer or employee of the Government or of the State, in the course of his or her duties, the work qualifies for copyright protection notwithstanding the provisions relating to the requirements as to qualification for copyright protection specified in section 182.

(2) The Government shall be the first owner of the copyright in a work to which subsection (1) applies.

(3) The copyright in a work to which subsection (1) applies shall be known and in this Act referred to as “Government copyright”, notwithstanding that the copyright may be, or may have been, assigned to another person.

(4) Government copyright in a work shall expire 50 years from the end of the calendar year in which the work was made.

(5) In the case of a work of joint authorship where one or more but not all of the authors is a person to whom subsection (1) applies, this section applies in relation to those persons and the copyright subsisting by virtue of their contribution to the work.

(6) Subject to subsections (1) to (5), this Part applies in relation to Government copyright as to other copyright.

(7) Where Oireachtas copyright subsists in a work this section shall not apply.

Copyright in Acts, etc.

192.—(1) The copyright in any Bill or enactment vests in the Houses of the Oireachtas.

(2) The copyright provided for in this section subsists from the date of the first lawful making available to the public of the work and shall expire 50 years from the end of the calendar year in which the work was so made available.

Houses of the Oireachtas: copyright

193.—(1) Where a work is made by or under the direction or control of either or both of the Houses of the Oireachtas —

- (a) the work qualifies for copyright protection notwithstanding the provisions relating to the requirements as to qualification for copyright protection specified in section 182, and
- (b) the House of the Oireachtas by whom, or under whose direction or control, the work is made shall be the first owner of any copyright in the work, and where the work is made by or under the direction or control of both Houses of the Oireachtas, each House shall be joint first owners of the copyright.

(2) The copyright in a work to which this section applies shall be known and in this Act referred to as “Oireachtas copyright”, notwithstanding that the copyright may be, or may have been, assigned to another person.

(3) Oireachtas copyright in a work shall expire 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 either or both of the Houses of the Oireachtas include —

- (a) any work made by an officer or employee of either House of the Oireachtas in the course of his or her duties, and
- (b) any sound recording, film, live broadcast or live cable programme of the proceedings of either House of the Oireachtas.

(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 either or both of the Houses of the Oireachtas, this section applies in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

(6) Subject to subsections (1) to (5), this Part applies in relation to Oireachtas copyright as to other copyright.

Oireachtas copyright

194.—(1) Subject to subsections (2) and (3), a permission to copy or to make available to the public any work, Act of the Oireachtas, Bill or other material protected by Oireachtas copyright under the provisions of this Chapter may be granted to any person.

(2) The conditions upon which any work, Act of the Oireachtas, Bill or other material protected by Oireachtas copyright may be made available under this Chapter shall be those imposed from time to time on such materials by the Ceann Comhairle of Dáil Éireann [Speaker of the Lower House of Parliament] and the Cathaoirleach of Seanad Éireann [Chairperson of the Upper House of Parliament] or an officer or employee of the Houses of the Oireachtas duly authorised for that purpose by the Ceann Comhairle of Dáil Éireann and the Cathaoirleach of Seanad Éireann.

(3) The conditions upon which any work, Act of the Oireachtas, Bill or other material protected by Oireachtas copyright may be made available under this Chapter shall be laid before each House of the Oireachtas as soon as may be after they have been imposed.

*Houses of the Oireachtas:
supplementary provisions
with regard to copyright*

195. For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, each of the Houses of the Oireachtas shall be deemed to have, and to have had, the legal capacities of a body corporate, which is not affected by a dissolution of either or both of the Houses of the Oireachtas.

**Chapter 20
International Organisations**

*Copyright vesting
in certain international organisations*

196.—(1) Notwithstanding that a work —

- (a) is made by an officer or employee of, or is lawfully made available to the public by, a prescribed international organisation to which this section applies, and
- (b) does not qualify for copyright protection under section 182,

copyright subsists in the work by virtue of this section and the organisation concerned shall be the first owner of that copyright.

(2) The Government may prescribe the international organisations to which this section applies.

(3) Where an international organisation in respect of which an order has been made under subsection (2) is the first owner of the copyright in a work by virtue of this section, the copyright in that work shall expire 50 years from the end of the calendar year in which the work was made or shall subsist for such longer period as the Government may by order specify for the purpose of complying with the international obligations of the State.

(4) An international organisation prescribed under subsection (2) shall be deemed to have, and to have had, 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.

Chapter 21 **Anonymous Works**

Works of folklore

197.—(1) Where, in the case of an anonymous work which has not been lawfully made available to the public, there is evidence that the author (or, in the case of a work of joint authorship, any of the authors) complied with the requirements for copyright protection specified in section 182 by having a connection with a country, territory, state or area other than the State, it shall be presumed until the contrary is proved that copyright subsists in the work.

(2) Where, under the law of a country, territory, state or area, a body is appointed to protect and enforce copyright in a work referred to in subsection (1), the Minister may by order designate that body for the purposes of this section.

(3) A body designated by order under subsection (2) shall be recognised in the State as having authority to protect and enforce copyright in a work referred to in subsection (1) in the place of the owner of the copyright, other than the authority to assign the copyright in the work and the body may bring proceedings relating to copyright in its own name.

(4) This section shall not apply where there has been an assignment of the copyright in a 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 or her.

Chapter 22 **Deposit of Certain Copyright Materials**

Delivery of certain material to libraries

198.—(1) The publisher of any book first published in the State after the commencement of this section or, in the case of the authority specified in paragraph (a), the

publisher of any book published in the State, shall, within one month after the publication, deliver, at his or her own expense, a copy of the book to each of the following —

- (a) the authority having control of the National Library of Ireland,
- (b) the authority having control of the library of Trinity College, Dublin,
- (c) the authority having control of the library of the University of Limerick,
- (d) the authority having control of the library of Dublin City University, and
- (e) the Board of the British Library,

and four copies of the book for or in accordance with the directions of the authority having control of the National University of Ireland for use in the four constituent universities of that University.

(2) Boards and authorities taking delivery of books under subsection (1) shall give a written receipt for every book delivered to them under that subsection.

(3) The Minister may, on an application of a Board or authority referred to in subsection (1), make regulations exempting from subsection (1) in respect of the Board or authority making the application, publications wholly or mainly in the nature of trade advertisements, or any class of work as may be specified in those regulations, and it shall not be necessary for the publisher of any publication so excepted to deliver the publication to that Board or authority or for such Board or authority to give a receipt unless as respects any particular publication a written demand for the delivery of that work is made by the Board or authority concerned.

(4) The Boards or authorities referred to in subsection (1) may, before delivery of a book is made under subsection (1), request that a book be delivered in a particular form, being one of the forms in which the book is published and the publisher shall deliver it in the form requested.

(5) The publisher of any book first published in the State after the commencement of this section shall, where a demand is made in writing by the authority having control of each of the following libraries —

- (a) the Bodleian Library, Oxford,
- (b) the University Library, Cambridge,
- (c) the National Library of Scotland, and
- (d) the National Library of Wales,

before the expiration of 12 months after the book is published, deliver within one month after receipt of that written demand or, where the demand was so made before the book was published, within one month after publication, to an address in Dublin named in the demand a copy of that book for, or in accordance with the directions of, that authority.

(6) In the case of an encyclopaedia, newspaper, review, magazine or work published in a series of numbers or parts, the written demand referred to in subsection (5) may include all numbers or parts of the work which may subsequently be published.

(7) A copy of a book delivered to the authority having control of the National Library of Ireland or the Board of the British Library pursuant to this section shall be a copy of the whole book with all maps and illustrations belonging to that book and, subject to subsection (4), finished in the same manner as the copy in that form which is superior in quality to any other copy in that form of the book available.

(8) A copy of a book delivered to any of the authorities referred to in this section, other than those referred to in subsection (7), pursuant to this section, shall be in the form specified by the Board or authority, which shall be one of the forms in which the book has been published, and shall be in like condition as that form of the book.

(9) Where a publisher fails to comply with this section he or she shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 and in addition the person shall be liable to be ordered to comply with this section.

(10) For the purposes of this section, “book” includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, plans, prints or other engravings belonging thereto.

(11) Where a copy of a book requested under subsection (1) is delivered in a form other than an electronic form, the Board or other authorities referred to in subsection (1) may request, in addition to that copy, a copy in an electronic form readable by means of an electronic retrieval system and on such request being made a copy in electronic form shall be delivered by the publisher to the Board or authority concerned.

(12) For the purposes of this section, “publication”, in relation to a book —

- (a) mean the issue of copies to the public, and
- (b) includes its making available to the public by means of an electronic retrieval system,

and related expressions shall be construed accordingly.

Chapter 23
Amendment of National
Cultural Institutions Act, 1997,
and Miscellaneous Repeals

Amendment of sections 65 and 66
of the National Cultural Institutions Act, 1997

199.—(1) Sections 65 and 66 of the National Cultural Institutions Act, 1997, are hereby amended by the substitution of the following sections therefor:

“65.—(1) Subject to the provisions of this section, the publisher of any material to which this section applies shall, within one month or such longer period as the authority having control of the National Library of Ireland may allow after its publication, deliver at his or her own expense, a copy of the material to that authority and the authority shall give a written receipt to the publisher for any and all such material delivered to them.

(2) The publisher of material to which this section applies that relates wholly or mainly to Ireland shall, if a written demand for any such material is made by the authority referred to in subsection (1) not later than 12 months after its publication, deliver a copy of the material to that authority within one month after receipt of the demand or, if the demand was made before its publication, within one month or such longer period as the authority may in any particular case allow after its publication.

(3) The Minister, following consultation with the Minister for Enterprise, Trade and Employment, may make such regulations as he or she considers appropriate in relation to the quality and format of material to which this section applies in cases where the copies of such material are not of uniform quality or can be published in different formats.

(4) Where a publisher fails to comply with this section, he or she shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 and to pay such sum not exceeding the value of the material as the court may decide which shall be paid to the trustees or authority to whom the material should have been delivered.

(5) In this section:

‘material to which this section applies’ means material that is of such class as may be specified in regulations made by the Minister, following consultation with the Minister for Enterprise, Trade and Employment, and in this definition, ‘material’ includes any engraving, photograph, text of a play, cinematograph film, microfilm, video recording, sound recording, record, diskette, magnetic tape, compact disc, or other thing on or in which works or information or the representations thereof is written, recorded, stored or reproduced but does not include local records or local archives within the meaning, in each case, of section 65 of the Local Government Act, 1994, or books within the meaning of section 198 of the Copyright and Related Rights Act, 2000,

‘publisher’, for the purposes of this section, means a person who issues to the public, or makes available to the public by means of an electronic retrieval system, material to which this section applies;

‘work’, for the purposes of this section, has the meaning assigned to it by section 2 of the Copyright and Related Rights Act, 2000.

(6) This section shall apply only to material concerned substantially or primarily with Ireland. In cases of doubt, the certification of the Minister to the effect that material is concerned substantially or primarily with Ireland shall satisfy the requirements of this subsection.

(7) The Minister, following consultation with the Minister for Enterprise, Trade and Employment, may by order apply this section, with such modifications and adaptations as he or she considers necessary, to one or more of the institutions or bodies referred to in section 198 of the Copyright and Related Rights Act, 2000.

(8) Section 6 of the Dublin City University Act, 1989, and section 7 of the University of Limerick Act, 1989, are hereby repealed.”.

Chapter 24 Copyright: Legal Tender

*Copyright in Irish legal tender notes,
euro notes, consolidated bank notes
and in Irish and euro coins*

200.—(1) Notwithstanding anything contained in this Part and subject to subsection (2), the copyright in legal tender notes issued, whether before or after the commencement of this section, by the Central Bank of Ireland (in this section referred to as “the Bank”) or issued before such commencement by the Currency Commission, shall be perpetual and vests in the Bank.

(2) This Part is without prejudice to the copyright of the European Central Bank in legal tender notes denominated in the euro unit.

(3) Notwithstanding anything contained in this Part, the copyright in consolidated bank notes issued before the commencement of this section by the Bank or by the Currency Commission shall be perpetual and vests in the Bank.

(4) Notwithstanding anything contained in this Part, the copyright in coins issued under the Coinage Act, 1926, gold coins issued under the Currency Act, 1927, coins issued under the Coinage Act, 1950, and coins issued under the Decimal Currency Acts, 1969 to 1990, and the copyright in the artistic work defining the design of any such coin shall be perpetual and vests in the Minister for Finance.

(5)(a) This Part is without prejudice to the copyright of the European Community in the common face of coins denominated in euro or in cent, and in the artistic work defining the design of any such face, or to the assignment of that copyright by the Commission of the European Communities on behalf of the European Community.

(b) Notwithstanding anything contained in this Part, the copyright in the national face of coins issued under section 11 of the Economic and Monetary Union Act, 1998, and the copyright in the artistic work defining the design of any such face shall be perpetual and vests in the Minister for Finance.

(c) Notwithstanding anything contained in this Part, the copyright in all coins issued under Part III of the Economic and Monetary Union Act, 1998, and the copyright in the artistic work defining the design of any such coin shall be perpetual and vests in the Minister for Finance.

(6) In the application of section 37(3) to any legal tender note or consolidated banknote or any coin to which this section applies, references in that subsection to the work as a whole or to any substantial part thereof shall be construed as references to the note or coin as a whole or to any part thereof.

(7) Chapter 6 of this Part shall not apply in relation to the copyrights referred to in this section.

(8) Coins to which this section applies and the artistic work defining the design of any such coin shall be deemed, for the purposes of section 172 of the Act of 1927, not to be designs.

(9) This section applies to coins issued under the Coinage Act, 1926, gold coins issued under the Currency Act, 1927, coins issued under the Coinage Act, 1950, coins issued under the Decimal Currency Acts, 1969 to 1990, and coins issued under the Economic and Monetary Union Act, 1998.

Chapter 25 **Disposal of Certain Books**

Disposal of books of King's Inns Library, Dublin

201. Notwithstanding anything contained in the King's Inns Library Act, 1945, or the enactments referred to in that Act or the Copyright Act, 1801, or the Copyright Act, 1836, the Benchers of the Honorable Society of King's Inns may sell or exchange any of the books of the King's Inns Library, Dublin, whether acquired before or after the commencement of this section.

PART III RIGHTS IN PERFORMANCES

Chapter I **Performers' Rights**

Interpretation

202.—(1) In Parts III and IV, “performance” means a performance of any actors, singers, musicians, dancers or other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform literary, dramatic, musical or artistic works or expressions of works of folklore, which is a live performance given by one or more individuals, and shall include a performance of a variety act or any similar presentation.

(2) A performance of a literary work includes a reading or recitation.

(3) A performance of a dramatic work includes a choreographic work or a work of mime.

(4) In Parts III and IV, “recording”, in relation to a performance, means any fixation —

- (a) made direct ly or indirectly from the live performance,
- (b) made from a broadcast of, or cable programme including, the performance, or
- (c) made directly or indirectly from another recording of the performance.

(5) The rights conferred by Parts III and IV are indepe ndent of —

- (a) the copyright in, or the rights conferred by Chapter 7 of Part II relating to, any work performed or any fixation of, or broadcast or cable programme including, the performance, and
- (b) other rights or obligations arising otherwisethanunde r Parts III and IV.

Performers’ rights: general

203.—(1) A performer has the exclusive light to authorise or prohibit —

- (a) the making of a recording of the whole or any substantial part of a qualifying performance directly from the live performance,
- (b) the broadcasting live, or including live in a cable programme service, of the whole or any substantial part of a qualifying performance, or
- (c) the making of a recording of the whole or any substantial part of a qualifying performance directly from a bro adcast of, or cable programme including, the live performance.

(2) The rights of a performer conferred by this section are infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake any of the acts referred to in subsection (1).

(3) The rights of a performer conferred by this section are not infringed by the making of a recording referred to in subsection (1) (c) by a person for his or her private and domestic use.

(4) Where a recording, which would otherwise be an illicit recording, is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(5) In an action for infringement of the rights of a performer brought under this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he or she did not know and had no reason to believe that consent had not been given.

Reproduction right of performer

204.—(1) A performer has the exclusive right to authorise or prohibit the making of a copy of a recording of the whole or any substantial part of a qualifying performance and it is immaterial whether the copy is made directly or indirectly.

(2) There shall be a right of a performer conferred by this section which shall be known and in this Part referred to as the “reproduction right”.

(3) The reproduction right is infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake the act referred to in subsection (1).

(4) The reproduction right is not infringed by the making of a copy referred to in subsection (3) by a person for his or her private and domestic use.

(5) Where a copy, which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(6) For the purposes of Parts III and IV, references to the making of a copy of a recording or to copying shall include the making of a temporary or permanent copy of a recording and the storing of a recording in any medium.

*Making available to public copies
of recordings of qualifying performances*

205.—(1) Subject to subsection (2), a performer has the exclusive right to authorise or prohibit the making available to the public of copies of a recording of the whole or any substantial part of a qualifying performance and it is immaterial whether the copy is made directly or indirectly.

(2) Where a copy of a sound recording is —

- (a) played in public, or
- (b) included in a broadcast or cable programme service,

the right conferred by this section shall be deemed to be satisfied by the payment of equitable remuneration as specified in section 208.

(3) A reference in Parts III and IV to the making available to the public of copies of a recording shall include the making available to the public of the original recording of the live performance.

(4) There shall be a right conferred by this section which shall be known and in Parts III and IV referred to as the “making available right”.

(5) A reference in Parts III and IV to the making available to the public of copies of a recording of a qualifying performance shall include —

- (a) making available to the public of copies of a recording, by wire or wireless means, in such a way that members of the public may access the recording from a place and at a time individually chosen by them, including the making available of copies of recordings through the Internet,
- (b) showing or playing a copy of the recording in public,
- (c) broadcasting a copy of the recording,
- (d) including a copy of the recording in a cable programme service,
- (e) issuing copies of the recording to the public,
- (f) renting copies of the recording, or
- (g) lending copies of the recording without the payment of remuneration to the rights owner.

(6) The making available right is infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake any of the acts referred to in subsection (5).

(7) Subject to subsection (8), the provision of facilities for enabling the making available to the public of copies of a recording of a performance shall not of itself constitute an act of making available to the public of copies of the recording.

(8) Without prejudice to subsection (7), where a person who provides facilities referred to in that subsection is notified by the rights owner that those facilities are being used to infringe any of the rights conferred by Parts III and IV and that person fails to remove that infringing material as soon as is practicable thereafter, that person shall also be liable for the infringement.

(9) Without prejudice to subsection (8), the Minister may prescribe the form of the notice to be given under that subsection and the forms shall specify —

- (a) the name and address of the person claiming to be the owner of the rights in the recording concerned,
- (b) the grounds that the person requesting the removal of material has for such removal, and
- (c) a list of the material which is to be removed.

(10) Where the making available right is infringed by a copy of a recording being played or shown in public, by means of apparatus for receiving sounds, images or data or any combination of sounds, images or data, or the representation thereof, conveyed by any means, the person by whom sounds, images or data or any combination of sounds, images or data, or the representation thereof, are sent shall not be regarded as liable for the infringement.

Distribution right of performers

206.—(1) References in Parts III and IV to the issue of copies of a recording to the public shall be construed as including —

- (a) the act of putting into circulation in a Member State of the EEA copies of a recording not previously put into circulation in a Member State of the EEA by or with the consent of the performer, or
- (b) the act of putting into circulation outside the Member States of the EEA copies of a recording not previously put into circulation in a Member State of the EEA or elsewhere.

(2) Without prejudice to the rental right or the lending right, references in this Part to the issue of copies of a recording to the public shall not include —

- (a) any subsequent circulation of copies of a recording previously put into circulation, or
- (b) any subsequent importation of such copies of a recording into the State or any other Member State of the EEA,

except in so far as subsection (1) (a) applies to putting into circulation in the Member States of the EEA copies of a recording previously put into circulation outside the Member States of the EEA.

(3) A reference in this section to circulation shall include sale, rental or loan.

(4) A performer has the exclusive right to authorise or prohibit the issue of copies of a recording to the public of the whole or any substantial part of a qualifying performance.

(5) There shall be a right conferred by this section which shall be known and in this Part referred to as the “distribution right”.

(6) The distribution right is infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake the acts referred to in subsection (4).

Rental and lending right of performer

207.—(1) References in Parts III and IV to “rental” or “lending” shall not be construed as including the making available to the public of copies of a recording for the purposes of —

- (a) playing or showing in public, broadcasting or inclusion in a cable programme service,
- (b) exhibiting in public, or
- (c) on the spot reference use.

(2) A performer has the exclusive right to authorise or prohibit the rental or lending of copies of a recording of the whole or any substantial part of his or her qualifying performance.

(3)(a) There shall be a right of the performer to authorise or prohibit the rental of copies of a recording which shall be known and in Parts III and IV referred to as the “rental right”.

(b) There shall be a right of the performer to authorise or prohibit the lending of copies of a recording which shall be known and in Parts III and IV referred to as the “lending right”.

(4) The rental right is infringed by a person who, without the consent of the performer, rents or authorises another to rent copies of a recording of the whole or any substantial part of a qualifying performance.

(5) The lending right is infringed by a person who, without the consent of the performer, lends or authorises another to lend copies of a recording of the whole or any substantial part of a qualifying performance.

(6) In Parts III and IV, and subject to subsections (7) and (8) —

(a) “rental” means making a copy of a recording available for use on terms that it will or may be returned after a limited period of time, for direct or indirect economic or commercial advantage;

(b) “lending” means making a copy of a recording available for use on terms that it will or may be returned after a limited period of time, otherwise than for direct or indirect economic or commercial advantage, through an establishment to which members of the public have access.

(7) The making of a copy of a recording available between establishments to which members of the public have access shall not infringe any of the rights conferred by Parts III and IV.

(8) Where lending by an establishment to which members of the public have access gives rise to a payment, the amount of which does not exceed 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.

*Right to equitable remuneration
for exploitation of sound recording*

208.—(1) A performer has a right to equitable remuneration from the owner of the copyright in a sound recording where the sound recording of the whole or any substantial part of a qualifying performance which has been made available to the public for commercial purposes —

(a) played in public, or

(b) included in a broadcast or cable programme service.

(2) A performer shall not assign the right to equitable remuneration under this section except to a collecting society for the purpose of enabling the collecting society to exercise that right on his or her behalf.

(3) The right to equitable remuneration is transmissible by testamentary disposition or by operation of law, as personal or moveable property, and it may be assigned or further transmitted, including by assignment, by any person who legally acquires the right.

(4) Subject to subsections (5) to (9), the amount of equitable remuneration payable under this section is that which has been agreed by or on behalf of the persons by and to whom it is payable.

(5) In default of agreement as to the amount of equitable remuneration payable, the person by or to whom it is payable may apply to the Controller for an order under subsection (8).

(6) Subject to subsection (7), a person to or by whom equitable remuneration is payable may also apply to the Controller —

- (a) to vary any agreement as to the amount payable, or
- (b) to vary any previous determination of the Controller as to the amount payable.

(7) An application may not be made under subsection (6) within 12 months from the date of the previous determination except with the special leave of the Controller.

(8) On an application being made under this section, the Controller shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as he or she may determine to be reasonable in the circumstances, having regard to the importance of the contribution of the performer to the sound recording.

(9) An order made under this section shall have effect from the date on which it is made or such later date as may be specified by the Controller.

(10) An agreement as to the amount of equitable remuneration payable shall be void in so far as it purports —

- (a) to exclude or restrict the right to equitable remuneration conferred by this section,
- (b) to prevent a person questioning the amount of equitable remuneration, or
- (c) to restrict the powers of the Controller conferred by this section.

Chapter 2 **Infringement of Performers' Rights**

*Consent required for recording
or live transmission of performance*

209. A person infringes the rights of a performer conferred by section 203 where he or she, without the consent of the performer —

- (a) shows or plays in public the whole or any substantial part of a qualifying performance, or
- (b) broadcasts or includes in a cable programme service 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 consent of the performer.

Meaning of illicit recording

210.—(1) In Parts III and IV “illicit recording”, in relation to a performance, shall be construed in accordance with this section.

(2) A recording of the whole or any substantial part of a performance shall be an illicit recording where the recording is made without the consent of the performer.

(3) A copy of a recording shall be an illicit recording where its making constitutes an infringement of a performer’s property rights in the recording concerned.

(4) Subject to subsection (5), a copy of a recording shall be an illicit recording where —

- (a) it has been or is to be imported into the State, and
- (b) its making in the State would have constituted an infringement of a performer’s property rights in the recording concerned, or breach of an exclusive licence agreement relating to that recording.

(5) A copy of a recording which previously has been issued to the public in accordance with section 206 in any other Member State of the EEA by, or with the consent of, the owner of the performers’ property rights in the recording, shall not be deemed to be an illicit recording for the purposes of subsection (4).

(6) A recording of the whole or any substantial part of a performance which is subject to an exclusive recording contract shall be an illicit recording where it is made, otherwise than for private and domestic use, without the consent of the person having recording rights or the consent of the performer.

(7) For the purposes of sections 258 and 260, a recording shall be deemed to be an illicit recording where it is an illicit recording for the purposes referred to in subsections (2), (3), (4) and (5) of this section.

Presumptions

211. Where in any proceedings for infringement of any right conferred by Part III or Part IV the question arises as to whether a recording is an illicit recording and it is shown that—

- (a) the recording is a recording of the performance concerned, and
- (b) rights conferred by Parts III and IV subsist or have subsisted at any time in the recording,

it shall be presumed until the contrary is proved that the recording was made at a time when such rights subsisted.

*Secondary infringement:
importing, possessing
or dealing with illicit recordings*

212.—(1) A person infringes the rights of a performer conferred by section 203 where he or she, without the consent of the performer —

- (a) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (b) imports into the State, otherwise than for his or her private and domestic use,
- (c) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or
- (d) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the performer,

a recording of a qualifying performance which is, and which he or she knows or has reason to believe is, an illicit recording.

(2) Where, in an action brought under this section for infringement of the rights of a performer, a defendant shows that the illicit recording was innocently acquired by him or her or his or her predecessor in title, the only remedy available against the defendant in respect of the infringement shall be an award of damages not exceeding a reasonable payment in respect of the act complained of.

(3) In Parts III and IV “innocently acquired” means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

*Secondary infringement: providing means
for making illicit recording*

213.—(1) A person infringes the rights of a performer conferred by section 203 where he or she, without the consent of the performer —

- (a) makes,

- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, or
- (d) has in his or her possession, custody or control,

an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings.

*Secondary infringement:
permitting use of apparatus
for infringing performances*

214. Where the rights of a performer conferred by this Part are infringed by a public performance of a recording of the performance, or by playing or showing the recording in public, by means of apparatus for —

- (a) playing sound recordings,
- (b) showing films, or
- (c) receiving sounds or images or any combination of sounds or images, or the representation thereof, conveyed by any means,

the following persons shall also be liable for the infringement —

- (i) a person who supplied the apparatus, or any substantial part thereof, if, when he or she supplied the apparatus or part thereof —
 - (I) he or she knew or had reason to believe that the apparatus was likely to be used to infringe the rights of a performer conferred by this Part, or
 - (II) in the case of apparatus the normal use of which involves a public performance, playing or showing, he or she had reason to believe that it would be used to infringe the rights of a performer conferred by this Part;
- (ii) an owner or occupier of premises who gave permission for the apparatus to be brought onto the premises if, when the owner or occupier gave permission, he or she knew or had reason to believe that the apparatus was likely to be used to infringe the rights of a performer conferred by this Part; and
- (iii) a person who supplied a copy of a sound recording or film used to infringe the rights of a performer conferred by this Part if, when the person supplied it, he or she knew or had reason to believe that what was supplied, or a copy made directly or indirectly therefrom, was likely to be used to infringe the rights of a performer conferred by this Part.

Chapter 3 Recording Rights

Interpretation

215.—(1) In Parts III and IV 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 that performer's performances with a view to their commercial exploitation.

(2) Subject to subsection (3), references in Parts III and IV to a "person having recording rights", in relation to a performance, are 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) Where a performance is subject to an exclusive recording contract but the person mentioned in subsection (2) is not a qualifying person, references in Parts III and IV to a "person having recording rights", in relation to the performance, are to a person —

- (a) who is licensed by the person having recording rights 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 their commercial exploitation" means with a view to the recordings being sold, rented or lent, or offered or exposed for sale, rental or loan or shown or played in public or otherwise made available to the public for commercial gain.

Infringement of recording rights by copying

216.—(1) A person infringes the rights conferred by this Part on a person having recording rights in relation to a performance where he or she, without the consent of the performer or of the person having recording rights in relation to the performance, makes a recording of the whole or any substantial part of the performance.

(2) Without prejudice to any other remedy, in an action brought under this section for infringement of the rights referred to in subsection (1), damages shall not be awarded against a defendant who shows that at the time of the infringement he or she did not know and had no reason to believe that consent had not been given.

Infringement of recording rights by use of illicit recording

217.—(1) A person infringes the rights conferred by this Part on a person having recording rights in relation to a performance where he or she, without the consent of the person having recording rights in relation to the performance or, in the case of a qualifying performance, the consent of the performer —

- (a) shows or plays in public the whole or any substantial part of the performance, or
- (b) broadcasts or includes in a cable programme service 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, where there was more than one such person, the consent of all of them).

*Secondary infringement: importing,
possessing or dealing with illicit recording*

218.—(1) A person infringes the rights conferred by this Part on a person having recording rights in relation to a performance where he or she, without the consent of the person having recording rights in relation to the performance or, in the case of a qualifying performance, the consent of the performer —

- (a) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (b) imports into the State, otherwise than for his or her private and domestic use,
- (c) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or
- (d) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the person having recording rights,

a recording of a performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where, in an action brought under this section for infringement of the rights conferred by this Part on a person having recording rights, a defendant shows that the illicit recording was innocently acquired by him or her or his or her predecessor in title, the only remedy available against the defendant in respect of the infringement shall be an award of damages not exceeding a reasonable payment in respect of the act complained of.

*Secondary infringement: providing means
for making illicit recordings*

219. A person infringes the rights conferred by this Part on a person having recording rights in relation to a performance where he or she, without the consent of the person having recording rights in relation to the performance or, in the case of a qualifying performance, the consent of the performer —

- (a) makes,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, or
- (d) has in his or her possession, custody or control,

an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings .

Chapter 4

Acts Permitted in Relation to Performances

Exemptions in respect of performance

220.—In this Part an act may be exempted under more than one category of exemption and the exemption of an act under one category of exemptions shall not preclude its exemption under another category.

Fair dealing with performances, etc.

221.—(1) Fair dealing with a performance or recording for the purposes of criticism or review, of that or another performance or recording, or of a work, or for the purpose of reporting current events, shall not infringe any of the rights conferred by this Part.

(2) In this Part “fair dealing” means the making use of a performance or a recording which has been lawfully made available to the public for a purpose and to an extent which will not unreasonably prejudice the interests of the rights owner.

Incidental use of performances

222.—(1) The rights conferred by this Part are not infringed by the inclusion in an incidental manner of a performance or recording in another recording or work.

(2) The rights conferred by this Part are not infringed by the making available to the public of anything whose making was not, by virtue of subsection (1), an infringement of those rights.

(3) A performance or recording shall not be regarded as included in an incidental manner in another recording or work where it is included in a manner where the interests of the rights owner are unreasonably prejudiced.

EDUCATION

*Copying of a performance
for purpose of instruction, etc.*

223.—(1) The rights conferred by this Part are not infringed by the copying of a recording of a performance in the course of instruction or preparation for instruction where the copying is done by or on behalf of a person giving or receiving instruction.

(2) The rights conferred by this Part are not infringed —

- (a) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination, or
- (b) by anything done for the purposes of an examination by way of communicating the questions to the examination candidates.

(3) Where a copy which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

*Playing of sound recording, etc.,
at an educational establishment*

224.—(1) The playing or showing of a sound recording, film, broadcast or cable programme before an audience limited to persons who are teachers in or pupils in attendance at an educational establishment or other persons directly connected with the activities of that establishment—

- (a) by a teacher or pupil in the course of the activities of the establishment concerned, or
- (b) by any person for the purposes of instruction,

is not a playing or showing of a performance or a recording in public for the purposes of infringement of the rights conferred by this Part.

(2) For the purposes of this section, a person is not directly connected with the activities of an educational establishment by reason only that he or she is a parent or a guardian of a pupil in attendance at the educational establishment concerned.

*Recording of broadcast, etc.,
on behalf of an educational establishment*

225.—(1) A recording of a broadcast or a cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational

purposes of that establishment without infringing any of the rights conferred by this Part in relation to any performance or recording included in the broadcast or cable programme.

(2) Where a recording which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

Performer's rights not infringed by lending

226.—(1) Subject to subsection (2) educational establishments and establishments to which members of the public have access shall be exempt from the payment of remuneration under section 205(5) (g) and shall not infringe the rights conferred by this Part by the lending of copies of a recording of a performance.

(2) The Minister shall prescribe the educational establishments and the establishments to which members of the public have access for the purposes of subsection (1).

LIBRARIES AND ARCHIVES

*Regulations relating to copying
of recordings by libraries and archives*

227.—(1) The Minister may make regulations for the purposes of this section and those regulations may make different provisions for different classes of libraries or archives and for different purposes.

(2) Without prejudice to the generality of subsection (1), the Minister may prescribe the libraries and archives to which sections 228 to 234 apply and may prescribe all or any of the following—

- (a) the conditions that are to be complied with when a librarian or archivist of a prescribed library or prescribed archive makes and supplies a copy of any part of a recording of a performance which has been lawfully made available to the public to a person requiring a copy;
- (b) the conditions that are to be complied with when a librarian or archivist of a prescribed library or prescribed archive makes and supplies to another prescribed library or prescribed archive a copy of a recording of a performance or part of a recording of a performance which has been lawfully made available to the public and is required by that other prescribed library or archive;
- (c) the conditions that are to be complied with before a librarian or archivist of a prescribed library or prescribed archive makes a copy of a recording of a performance in the permanent collection of the library or archive in order to preserve or replace that recording in the permanent collection of that prescribed library or prescribed archive, or in the permanent collection of another prescribed library or prescribed archive;

- (d) the conditions that are to be complied with by a librarian or archivist of a prescribed library or prescribed archive when making or supplying a copy of the whole or part of certain recordings of a performance which have not been lawfully made available to the public from a recording in the prescribed library or prescribed archive to a person requiring the copy.

Libraries and archives: declarations

228.—(1) Where regulations made by the Minister under section 227 require a librarian or archivist to be satisfied as to any matter before making or supplying a copy of a recording of a performance —

- (a) the librarian or archivist concerned may rely on a declaration as to that matter by the person requesting the copy, unless the librarian or archivist is aware that it is false in a material particular, and
- (b) in such cases as may be prescribed, the librarian or archivist shall not make or supply the copy in the absence of a declaration in such form as may be prescribed.

(2) Where a person requesting a copy of a recording of a performance makes a declaration which is false in a material particular and is supplied with a copy which would have been an illicit recording if made by him or her —

- (a) he or she shall be liable for infringement of the rights conferred by this Part as if he or she had made the copy, and
- (b) the copy shall be treated as an illicit recording.

*Copying by librarians or archivists:
parts of recordings lawfully
made available to public*

229.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply a copy of part of a recording of a performance which has been lawfully made available to the public without infringing any rights conferred by this Part.

(2) A copy made under subsection (1) shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for the purposes of research or private study and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of the same recording unless the person satisfies the librarian or archivist that the previous copy has been lost, stolen, discarded or destroyed or a reasonable period of time has elapsed, and that person shall not be furnished with a copy of more than a reasonable proportion of any recording of a performance.

Multiple copying

230.—(1) A copy of a recording shall not be supplied under section 229 to more than 3 persons whose requirements are related to any similar requirement of any other person.

(2) For the purposes of subsection (1) —

- (a) the requirements of persons shall be deemed to be similar where the requirements are for copies of substantially the same material at approximately the same time and for substantially the same purpose, and
- (b) the requirements of persons shall be deemed to be related where those persons receive instruction to which the material is relevant at the same time and place.

*Copying by librarians or archivists:
supply of copies
to other libraries and archives*

231.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply to another prescribed library or prescribed archive a copy of the whole or part of a recording of a performance, which has been lawfully made available to the public, without infringing any rights conferred by this Part.

(2) Subsection (1) shall not apply where, at the time the copy is made, the librarian or archivist making it could, by reasonable enquiry, obtain the consent of a person entitled to authorise the making of the copy.

*Copying by librarians or archivists:
replacement copies
of recordings of performances*

232.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make a copy of a recording of a performance in the permanent collection of the library or archive —

- (a) in order to preserve or replace that recording by placing the copy in the permanent collection of that library or archive in addition to or in place of that recording, or
- (b) in order to replace in the permanent collection of another prescribed library or prescribed archive a recording which has been lost, destroyed or damaged,

without infringing any right conferred by this Part.

(2) This section shall only apply where it is not reasonably practicable to purchase a copy of the recording concerned for the purpose of subsection (1).

*Copying by librarians or archivists
for certain purposes*

233.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make a copy of a recording of a performance in the permanent collection of the library or archive —

- (a) for the purposes of obtaining insurance cover for the copy of a performance concerned;
- (b) for purposes of security;
- (c) for the purposes of compiling or preparing an archival record of the performance; or
- (d) for exhibition in the library or archive,

without infringing any rights conferred by this Part.

(2) This section shall apply to copying conducted for the curatorial purposes specified in subsection (1), and to an extent reasonably justified by the non-commercial purpose to be achieved.

*Copying by librarians or archivists:
certain recordings
not lawfully made available to public*

234.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply a copy of the whole or part of a recording of a performance which has not been lawfully made available to the public from any recording in the permanent collection of the library or archive without infringing any right conferred by this Part.

(2) This section shall not apply where the performer, or the person having recording rights in the relevant performance, has prohibited copying of that recording of the performance and at the time the copy is made the librarian or archivist making the copy knew, or ought to have been aware of, that fact.

(3) A copy made under subsection (1) shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for purposes of research or private study and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of that recording or part of that recording.

*Copy of recording required
to be made as condition of export*

235. Where a recording of a performance of cultural or historical importance or interest may not lawfully be exported from the State unless a copy of it is made and deposited in a library, archive or other institution designated by the Minister for Arts, Heritage, Gaeltacht and the Islands under section 50 of the National Cultural Institutions Act, 1997, it shall not be an infringement of any right conferred by this Part to make that copy.

*Copying by librarians or archivists:
illicit recording*

236. Where a copy which would otherwise be an illicit recording is made under section 229, 231, 232, 234 or 235 but is subsequently sold, rented or lent, or offered or exposed for

sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

PUBLIC ADMINISTRATION

Parliamentary and judicial proceedings

237. The rights conferred by this Part are not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting those proceedings.

Statutory inquiries

238.—(1) The rights conferred by this Part are not infringed by anything done for the purposes of a statutory inquiry or for the purpose of reporting any such inquiry.

(2) The rights conferred by this Part are not infringed by the making available to the public of copies of a report of a statutory inquiry containing a recording of a performance.

Copying of material in public records

239. Any material which is comprised in records which are open to public inspection may be copied, and a copy may be supplied to any person, without infringing any right conferred by this Part.

Material open to public inspection on a statutory register

240.—(1) Without prejudice to the generality of section 239, where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, the rights conferred by this Part are not infringed by the copying, for a purpose which does not involve the making available to the public of copies, of so much of the material as contains factual information of any description, by or with the authority of the person required to make the material open to public inspection or, by or on the authority of the person maintaining the register.

(2) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, the rights conferred by this Part are not infringed by the copying or making available to the public of copies of that material, for the purpose of enabling the material to be inspected at another time or place, or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed, by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register.

(3) Where a recording of a performance is made available to the public under this section the person granting access to the material shall ensure that it bears a mark clearly

indicating that it is provided for the purpose of inspection and that no other use of the material may be made without the consent of the person entitled to authorise such use.

(4) Material may not be provided under this section unless the person granting access to the material has first obtained from the person requesting the material a declaration, in such form as may be prescribed, indicating that the material is required for the sole purpose of enabling the material to be inspected at another time or place or to otherwise facilitate the exercise of the right of public inspection.

(5) Where material which is open to public inspection pursuant to a statutory requirement, or is on a statutory register, contains information about matters of general, scientific, technical, commercial or economic interest, the rights conferred by this Part are not infringed by the copying or making available to the public of copies of that material for the purpose of disseminating that information, by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register.

(6) The Minister may prescribe the conditions which are to be complied with before material is made available to the public under this section.

(7) The Minister may by order provide that subsections (1) to (5) apply —

- (a) to material made open to public inspection by —
 - (i) an international organisation specified in the order, or
 - (ii) a person specified in the order who has functions in the State under an international agreement to which the State 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 on a statutory register.

Acts done under statutory authority

241.—(1) Where the undertaking of a particular act is specifically authorised by an enactment then, unless the enactment provides otherwise, the undertaking of that act shall not infringe any right conferred by this Part.

(2) Nothing in this section shall be construed as excluding any defence available under any enactment.

RECORDINGS IN ELECTRONIC FORM

*Transfer of copies
of recordings in electronic form*

242.—(1) This section applies where a recording of a performance in electronic form has been purchased on terms which expressly or impliedly allow the purchaser to make further recordings in connection with his or her use of the recording .

(2) Where 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 licence or terminating any licence on a transfer, or
- (b) specifying the conditions on which a transferee may undertake the acts which the purchaser was permitted to undertake,

then, any acts which the purchaser was permitted to undertake may also be undertaken by a transferee without infringement of any right conferred by this Part, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(3) Subsection (2) applies where the original purchased recording is no longer usable and that which is transferred is a further recording used in its place.

(4) This section shall apply on a second and subsequent transfer in like manner as to the first transfer to a purchaser and references to the purchaser shall be construed as references to a second or subsequent transferee.

(5) This section shall not apply in relation to a recording purchased before the commencement of this Part.

MISCELLANEOUS MATTERS
RELATING TO PERFORMERS' RIGHTS*Use of recordings of spoken words
in certain cases*

243.—(1) Subject to compliance with the conditions specified in subsection (2), where a recording of the reading or recitation of a literary or dramatic work is made for the purpose of—

- (a) reporting current events, or
- (b) broadcasting or including in a cable programme service the whole or part of the reading or recitation,

it is not an infringement of any right conferred by this Part to use the recording or to make further copies and use those copies for the purposes referred to in paragraphs (a) and (b).

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

- (a) that the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme,
- (b) that the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation,
- (c) that the use made of the recording is not prohibited by or on behalf of the person giving the reading or recitation before the recording was made, and
- (d) that the use made of the recording is by or with the authority of a person who is lawfully in possession of the recording.

Transient and incidental copies

244.—(1) The rights conferred by this Part are not infringed by the making of a transient and incidental copy of a recording of a performance which is technically required for the viewing of or listening to the recording by a member of the public to whom the recording is lawfully made available.

(2) Where a copy which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

Recordings of works of folklore

245.—(1) A recording of a performance of an anonymous work which has not been lawfully made available to the public may be made for the purpose of including it in an archive maintained by a designated body without infringing any right conferred by this Part where at the time the recording is made —

- (a) the making of the recording does not infringe any copyright, and
- (b) the making of the recording is not prohibited by any performer.

(2) A copy of a recording made under subsection (1) and included in an archive maintained by a designated body may, subject to compliance with the conditions referred to in subsection (3), be made and supplied by an archivist without infringing any right conferred by this Part.

(3) The conditions referred to in subsection (2) relating to the actions of archivists are —

- (a) that a copy may not be supplied other than to a person who satisfies the archivist that he or she requires that copy for the purposes of research or private study and he or she shall not use it for any other purpose, and

(b) that a person shall not be furnished with more than one copy of the same recording.

(4) In this section “designated body” means a body designated for the purposes of section 92.

*Playing or showing sound recordings,
broadcasts and cable programmes
in certain premises*

246.—(1) Subject to subsection (2), it is not an infringement of any of the rights conferred by this Part to cause a sound recording, broadcast or cable programme to be heard or viewed where it is heard or viewed —

- (a) in part of the premises where sleeping accommodation is provided for the residents or inmates, and
- (b) as part of the amenities provided exclusively or mainly for residents or inmates.

(2) Subsection (1) does not apply in respect of any part of premises to which subsection (1) applies where there is a discrete charge made for admission to the part of the premises where a sound recording, broadcast or cable programme is to be heard or viewed.

*Playing of sound recordings
for clubs, societies, etc.*

247.—(1) Subject to compliance with the conditions specified in subsection (2), it is not an infringement of any right conferred by this Part to play a sound recording as part of the private activities of or for the benefit of a club, society or other organisation.

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

- (a) that the club, society or other organisation is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare, and
- (b) the proceeds of any charge for admission to the place where the sound recording is to be heard are applied solely for the purposes of the club, society or other organisation.

(3) Subsection (1) shall not apply in the case of any club, society or other organisation where a charge is made for admission to the place where the sound recording is to be heard and any of the proceeds of the charge are applied otherwise than for the purpose of the club, society or other organisation.

*Recording for purposes
of broadcast or cable programme*

248.—(1) Where, by virtue of a licence or assignment of a right conferred by this Part, a person is authorised to broadcast or include in a cable programme service a recording of a

performance, he or she shall be deemed to be licensed by the owner of the right in the recording to copy or authorise the copying of that recording by means of his or her facilities for the purposes of his or her broadcaster or cable programme.

(2) A licence conferred by subsection (1) shall be subject to the condition that any copy resulting from the exercise of that licence shall not be used for any purpose other than the broadcast or cable programme and shall be destroyed within 3 months of first being used for broadcasting or included in a cable programme service.

(3) A copy of a recording made under this section shall be treated as an illicit recording where it is used for purposes other than broadcasting or inclusion in a cable programme service or where it is used after the expiration of 3 months from the date it is first used for broadcasting or included in a cable programme, service.

*Recording for purposes of supervision
and control of broadcasts
and cable programmes*

249.—(1) The rights conferred by this Part are not infringed by the making or use by an authorised broadcaster or authorised cable programme service provider, for the purpose of maintaining supervision and control over programmes broadcast by them or included by them in a cable programme service, of recordings of those programmes.

(2) The rights conferred by this Part are not infringed by any use made by any body established by the State to regulate the operations of broadcasters or cable programme service providers of any recordings of broadcasts or cable programmes.

Recording for purposes of time-shifting

250.—(1) The making for private and domestic use of a fixation of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at another time or place shall not infringe any right conferred by this Part.

(2) Subject to subsection (3), the making by an establishment for private and domestic use of a fixation of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at another time or place shall not infringe any right conferred by this Part.

(3) The Minister may specify by order establishments for the purposes of this section.

*Reception and retransmission
of broadcast in cable programme service*

251.—(1) This section applies where a broadcast made from a place in the State is, by reception and immediate retransmission, without alteration, included in a cable programme service.

(2) The rights conferred by this Part in relation to a performance or recording included in a broadcast to which this section applies are not infringed where —

- (a) the inclusion is pursuant to a statutory requirement, or
- (b) the broadcast is made for reception in the area in which the cable programme service is provided and it is not a satellite transmission or an encrypted transmission.

(3) Where the making of a broadcast is an infringement of any right conferred by this Part, the fact that the broadcast was retransmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.

Provision of modified recordings

252.—(1) A designated body may —

- (a) make a copy of a recording, for the purpose of modifying that copy to meet the special needs of a person who has a physical or mental disability, and
- (b) supply that modified copy to that person without infringing any right conferred by this Part.

(2) Where a copy which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(3) In this section “designated body” means a body designated for the purposes of section 104.

Recording for archival purposes

253.—(1) A recording of a broadcast or a cable programme of a designated class or a copy of such a recording may be made for the purpose of including it in an archive maintained by a designated body without infringing any right conferred by this Part in relation to a performance or recording included in the broadcast or cable programme.

(2) In this section —

- “designated body” means a body designated for the purposes of section 105;
- “designated class” means a class designated for the purposes of section 105.

Power of Controller to consent on behalf of performer

254.—(1) Subject to the service or publication of such notices as may be required by rules made under section 363 or as the Controller may in any particular case direct, the Controller may by order, on the application of a person wishing to make a copy of a recording

of a performance, consent to the making of the copy in a case where the identity or location of the person entitled to the reproduction right cannot be ascertained by reasonable enquiry.

(2) The consent given by the Controller under subsection (1) has effect in the same manner as the consent of the person entitled to the reproduction right for the purposes of section 204 and may be given subject to any conditions specified in the order made under subsection (1).

(3) For the purposes of giving consent under subsection (1), the Controller shall take into account —

- (a) whether the original recording was made with the consent of the performer and is lawfully in the possession, custody or control of the person proposing to make the copy, and
- (b) whether the making of the copy 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.

(4) Subsection (3) shall not affect the obligation of the Controller in any case to have regard to all relevant circumstances.

(5) Where the Controller consents under subsection (1) he or she shall, in default of agreement between the applicant and the person entitled to the reproduction right, make such order as the Controller thinks fit as to the payment to be made to the person entitled to the reproduction right in consideration of consent being given.

Chapter 5 Delivery Up and Seizure

Order for delivery up

255.—(1) Where a person —

- (a) in the course of a business, trade or profession, has in his or her possession, custody or control an illicit recording of a performance,
- (b) has in his or her possession, custody or control an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings, or
- (c) has in his or her possession, custody or control a protection-defeating device,

a person having rights conferred by this Part in relation to the performance may apply to the appropriate court for an order that the illicit recording, article or device be delivered up to him or her or to such other person as the court may direct.

(2) An application under subsection (1) shall not be made after the expiration of the period specified in section 263(1) as being the limit of the period for delivery up 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 as to the disposal of the illicit recording, article or device.

(3) A person to whom an illicit recording, article or device is delivered up pursuant to an order made under this section shall, where an order under section 264 as to the disposal of the illicit recording, article or device is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

*Application to District Court
for seizure of illicit recordings,
articles or devices, etc.*

256.—(1) Without prejudice to section 257 where the owner of the rights in a recording of a performance conferred by this Part applies to the District Court, it may, where satisfied that there are reasonable grounds for believing that there are being hawked, carried about or marketed—

- (a) illicit recordings of the performance,
- (b) articles specifically designed or adapted for making recordings of a performance, which the person hawking, carrying about or marketing those articles, knows or has reason to believe that they have been or are to be used to make illicit recordings of a performance, or
- (c) protection-defeating devices,

authorise by order a member of the Garda Síochána to seize without warrant the recordings, articles or devices and to bring them before the District Court.

(2) On being satisfied that a recording, article or device referred to in subsection (1) is—

- (a) an illicit recording,
- (b) an article that has been or is to be used to make illicit recordings, or
- (c) a protection-defeating device,

the District Court may order the recording, article or device to be destroyed or to be delivered up to the rights owner or otherwise dealt with as the Court may think fit.

(3) In an application to the District Court under subsection (1) or, in any *ex parte* application or interlocutory motion to a court of competent jurisdiction for an order which would permit the applicant to enter and search premises or place specified therein and take possession of material found therein on terms set out in such order, the court hearing such an application may receive hearsay evidence to the effect that the witness or deponent believes that the material may be found in a particular location.

(4) A witness or deponent shall not be obliged to indicate the source of the information upon which that witness formed the belief that material may be found in a particular location.

(5) After the implementation of an order made under this section, the court may, on the application of a person aggrieved by it, award damages against the applicant for the order as it considers just, on being satisfied that —

- (a) no infringement of a right conferred by this Part has been established, and
- (b) the information on which the rights owner applied for the order was given maliciously.

*Right of rights owner
to seize illicit recordings,
articles or devices, etc.*

257.—(1) Where it would be impracticable for the owner of the rights in a recording of a performance to apply to the District Court for an order under section 256, a recording, article or device referred to in section 256(1), in respect of which the rights owner would be entitled to apply for an order for delivery up under section 255, may be seized and detained by the rights owner or a designated representative of that owner where the recording, article or device is found being hawked, carried about or marketed.

(2) The right to seize and detain conferred by subsection (1) is exercisable subject to subsections (4) to (8) and is subject to any decision of the court relating to disposal of illicit recordings, articles or devices under section 264.

(3) A person whose seizures any illicit recordings, articles or devices under this section shall apply to the District Court for an order to dispose of those recordings, articles or devices within 30 days of the seizure.

(4) Before any illicit recordings, articles or devices are seized under this section notice of the time and place of the proposed seizure shall be given to a member of the Garda Síochána in the District Court Area in which the recordings, articles or devices are to be seized.

(5) A person exercising the right to seize and detain conferred by subsection (1) may enter premises to which members of the public have access.

(6) A person exercising the right to seize and detain conferred by subsection (1) may not seize anything in the possession, custody or control of a person at his or her permanent or regular place of business, trade or profession, and may not use any force.

(7) Without prejudice to the generality of subsection (6) a person exercising the right to seize and detain conferred by subsection (1) may make an inventory or prepare other evidence of infringement of any of the rights conferred by this Part or potential infringement of such rights. e

(8) At the time when any illicit recordings, articles or devices are seized under this section there shall be given to the owner, occupier or person in charge of the place where the recordings, articles or devices are seized a notice, in the prescribed form, informing the person

of the right of the owner of the recordings, articles or devices being seized to apply to the District Court for the return of the recordings, articles or devices on the grounds that they are not—

- (a) illicit recordings of a performance,
- (b) articles that have been or are to be used to make illicit recordings, or
- (c) protection-defeating devices.

(9) Without prejudice to the generality of subsection (8), the Ministers shall prescribe the form of the notice to be given under that subsection and the form shall specify —

- (a) the name and the address of the person claiming to be the owner of the rights in the recording concerned,
- (b) the statutory authority for the seizure,
- (c) the grounds that the person seizing the recordings, articles or devices has for such seizure, and
- (d) a list of that which is seized.

(10) The owner of any recordings, articles or devices seized under this section may apply to the District Court for the return of those recordings, articles or devices.

(11) Rules of court shall be made under this section and the rules shall provide for procedures to enable applications to be made and dealt with in an expeditious manner.

(12) Where there has been an exercise of the right to seize and detain, conferred by subsection (1), the court may, on the application of a person aggrieved by it, award damages against a person who exercises that right as it considers just on being satisfied that —

- (a) no infringement of a right conferred by this Part has been established, and
- (b) the person had no reasonable grounds for such seizure.

Chapter 6 Offences: Performances

Offences

258.—(1) A person who, without the consent of the rights owner —

- (a) makes for sale, rental or loan,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, otherwise than for his or her private and domestic use,
- (d) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or
- (e) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the rights owner,

a recording which is, and which he or she knows or has reason to believe is, an illicit recording, shall be guilty of an offence.

(2) A person who —

- (a) makes,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, or
- (d) has in his or her possession, custody or control,

an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings, shall be guilty of an offence.

(3) A person who —

- (a) (i) makes,
- (ii) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (iii) imports into the State, or
- (iv) has in his or her possession, custody or control a protection — defeating device, knowing or having reason to believe that it has been or is to be used to circumvent rights protection measures, or
- (b) provides information, or offers or performs any service intended to enable or assist persons to circumvent rights protection measures,

shall be guilty of an offence.

(4) Where the rights conferred by this Part are infringed —

- (a) by the playing or showing in public of a recording of a performance, or
- (b) by the broadcasting or inclusion in a cable programme service of a performance or a recording of a performance,

the person who caused the recording of the performance to be shown or played, or the performance or the recording of the performance to be broadcast or included in a cable programme service, shall be guilty of an offence where he or she knew or had reason to believe that the rights conferred by this Part would be infringed.

(5) An offence shall not be committed under subsection (1) or (4) by the undertaking of an act which under this Part may be undertaken without infringing the rights conferred by this Part.

(6) A person guilty of an offence under subsection (1), (2) or (3) shall be liable —

- (a) on summary conviction, to a fine not exceeding £1,500 in respect of each illicit recording, article or device, or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

(7) A person guilty of an offence under subsection (4) shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,500 in respect of each offence, or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

False claims of rights in performances

259. A person who, for financial gain, makes a claim to enjoy a right under this Part or Part IV which is, and which he or she knows or has reason to believe is, false, shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

Order for delivery up in criminal proceedings

260.—(1) The court may, on conviction of a person or being satisfied that there is a *prima facie* case to answer, where the court is satisfied that at the time of the arrest or charge the person had in his or her possession, custody or control—

- (a) in the course of a business, trade or profession, a recording of a performance, knowing or having reason to believe it to be an illicit recording,
- (b) an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it had been or was to be used to make illicit recordings, or
- (c) a protection-defeating device,

order that the illicit recording, article or device be delivered up to the rights owner or to such other person as the court may direct.

(2) An order may be made by the court of its own motion, or on the application of the person bringing a prosecution, and may be made whether or not the person is convicted of the offence, but shall not be made—

- (a) after the expiration of the periods specified in section 263(3) as being the limit of the period for delivery up, or
- (b) where it appears to the court unlikely that any order will be made as to the disposal of the illicit recordings, articles or devices.

(3) A person to whom an illicit recording, article or device is delivered up pursuant to an order made under this section shall retain it pending the making of a final order or decision not to make an order, as the case may be.

Search warrants and seizure

261.—(1) Where a Judge of the District Court is satisfied by information on oath that there are reasonable grounds for suspecting —

- (a) that an offence under section 258 has been, or is about to be, committed in, on or at any premises or place, and
- (b) that evidence that such an offence has been, or is about to be, committed is in, on or at those premises or that place,

the court may issue a warrant authorising a member of the Garda Síochána, accompanied by such other members of the Garda Síochána or other person or persons as that member thinks proper, at any time or times within 28 days from the date of the issue of the warrant, on production, where requested, of that warrant, to enter and search the premises or place specified in the warrant using reasonable force where necessary, and to do all or any of the following acts —

- (i) to seize any copies of any recordings, articles or devices in respect of which he or she has reasonable grounds for suspecting that an offence under section 258 has been or is about to be committed;
- (ii) to make an inventory or prepare other evidence of infringement or potential infringement of any right conferred by this Part;
- (iii) to seize anything found there which he or she believes on reasonable grounds may be required to be used in evidence in any proceedings brought in respect of an offence under this Act;
- (iv) to require any person found there to give his or her name and address.

(2) A warrant issued under this section may authorise persons, including the rights owner or designated representative thereof, to accompany and assist any member of the Garda Síochána in executing the warrant or in collating any inventory or other evidence.

(3) A person who —

- (a) obstructs or interferes with a person acting under the authority of a warrant issued under this section,
- (b) is found in, on or at the premises or place specified in the warrant by a member of the Garda Síochána acting as aforesaid and who fails or refuses to give the member his or her name and address when required to do so or gives a name or address that is false or misleading,
- (c) obstructs the exercise of an authority conferred by a warrant under this section, or
- (d) fails or refuses to give information to a member of the Garda Síochána when required to do so under this section,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or both.

*Falserepresentationofauthority
togiveconsent*

262.—(1) It shall be an offence for a person to represent falsely that he or she is authorised by any person to give consent for the purposes of this Part in relation to a performance, unless she or she believes on reasonable grounds that he or she is so authorised.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or both.

*Periodafterwhichremedyofdeliveryup
isnotavailable*

263.—(1) Subject to subsection (2), an application for an order under section 255 may not be made after the expiration of 6 years from the date on which the illicit recording, article or device was made.

(2) Where, during the whole or any part of the period referred to in subsection (1), a person entitled to apply for an order for delivery up —

- (a) is under a disability, or
- (b) is prevented by fraud or concealment from discovering the facts entitling him or her to apply for an order,

an application under section 255 may be made at any time before the expiration of 6 years from the date on which the applicant ceased to be under a disability, or, as the case may be, could, with reasonable diligence, have discovered those facts.

(3) An order for delivery up in criminal proceedings under section 260 shall not, in any case, be made after the expiration of 6 years from the date on which the proceedings under section 260 were initiated.

(4) Where in any proceedings for an order for delivery up under section 255 or 260 the date of the making of the illicit recording, article or device is put into question by the defendant, the onus of proof shall be on the defendant that the illicit recording, article or device was made more than 6 years before the date on which an application for an order under section 255 was made or proceedings under section 260 were initiated.

*Orderastodisposalofillicitrecording,
articleordevice*

264.—(1) An application may be made to the appropriate court for an order that an illicit recording, article or device —

- (a) delivered up under section 255 or 260, or
- (b) seized and detained under section 256 or 261,

shall be —

- (i) forfeited to the rights owner, or
- (ii) destroyed or otherwise dealt with as the court may direct,

and the court may make such an order or such other order as it thinks fit.

(2) In considering what order, if any, should be made under subsection (1) the court shall consider whether other remedies available in an action for infringement of the rights conferred by this Part would be adequate to compensate the person entitled to those rights and to protect his or her interests.

(3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the recordings, articles or devices concerned, and any such person may —

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

(4) An order made under this section shall not take effect until the expiration of the period within which notice of an appeal may be given or, where before the expiration of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(5) Where there is more than one person interested in a recording, article or device, the court shall make such order as it thinks fit and may direct the recording, article or device to be sold or otherwise dealt with and any proceeds divided in accordance with the direction of the court.

(6) Where the court decides that no order shall be made under this section, the person who had the recording, article or device in his or her possession, custody or control immediately before it was delivered up or seized shall be entitled to its return.

(7) References in this section to a person having an interest in a recording, article or device include any person in whose favour an order may be made under this section in respect of the recording, article or device or under section 145 or under section 23 of the Trade Marks Act, 1996.

Chapter 7

Licensing Schemes: Performers' Property Rights Licensing

Licensing schemes and licensing bodies

265.—(1) In this Part —

“licences” means licences to undertake or authorise the undertaking of any of the acts restricted by a performer’s property rights;

“licensing body” means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, either as owner or prospective owner of a performer’s property rights, or as exclusive licensee or agent for him or her, of performers’ property rights licences, and whose objects include the granting of licences relating to the performances of more than one performer;

“licensing scheme” means a scheme specifying —

(a) the classes of case in which the operator of the scheme, or the person on whose behalf that operator acts, is willing to grant performers’ property rights licences, and

(b) the terms on which licences would be granted in those classes of case,

and for this purpose a “scheme” includes any thing in the nature of a scheme, whether described as a scheme or as a tariff for any other name.

(2) References in this Part to licences or licensing schemes relating to the performances of more than one performer shall not include licences or schemes relating to —

(a) performances recorded in a single recording, or

(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, including holding companies and their subsidiaries.

REFERENCES AND APPLICATIONS RELATING TO LICENSING SCHEMES

General references

266. Sections 267 to 272 apply to licensing schemes which are operated by licensing bodies in relation to the performer’s property rights of more than one performer, in so far as they relate to licences for any of the acts restricted by a performer’s property rights under sections 204 and 205.

Reference of proposed licensing scheme to Controller

267.—(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Controller by an organisation which claims to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply.

(2) The Controller shall not consider a reference by an organisation under subsection (1) unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) The Controller may refuse to consider a reference under subsection (1) on the ground that the reference is premature.

(4) Where the Controller decides to consider a reference under subsection (1) he or she shall consider the subject matter of the reference and make an order, either confirming or varying the proposed scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

Reference of licensing scheme to Controller

268.—(1) Where a licensing scheme is in operation and a dispute arises with respect to the scheme between the operator of the scheme and —

- (a) a person claiming that he or she requires a licence in a case of a description to which the scheme applies, or
- (b) an organisation claiming to be representative of such persons,

that operator, person or organisation may refer the scheme to the Controller in so far as it relates to cases of that description.

(2) The Controller shall not consider a reference by an organisation under subsection (1) unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) A scheme which has been referred to the Controller under subsection (1) shall remain in operation until proceedings in relation to the reference are concluded.

(4) The Controller shall consider the matter referred to him or her and shall make an order, confirming or varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

Further reference of scheme to Controller

269.—(1) Where the Controller has, in respect of a licensing scheme under section 267 or 268 or under this section, made an order in respect of a scheme, and the order remains in force, the person to whom this section applies may refer the scheme to the Controller in so far as it relates to cases of that description.

- (2) This section applies to —

- (a) the operator of the scheme,
- (b) a person claiming that the order here requires a licence in a case of the description to which the order applies, and
- (c) an organisation claiming to be representative of persons referred to in paragraph (b).

(3) Where an order under section 267 or 268 or this section is in force the licensing scheme in respect of which the order is made shall not, except with the special leave of the Controller, be referred to the Controller in respect of the same description of cases —

- (a) within 12 months from the date of the order in respect of the previous reference, or
- (b) where the order was made so as to be in force for 15 months or less, until the last 3 months before the expiration of the order.

(4) A scheme which has been referred to the Controller under subsection (1) shall remain in operation until proceedings in relation to the reference are concluded.

(5) The Controller shall consider the matter referred to him or her and shall make an order, confirming, varying or further varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(6) An order under subsection (5) may be made for such period as the Controller may determine.

*Application for grant of a licence
in connection with a licensing scheme*

270.—(1) A person who claims, in a case to which a licensing scheme relates, that the operator of the scheme has refused to grant or to procure the grant to him or her of a licence in accordance with the scheme, or has failed to do so within a reasonable period, may apply to the Controller for an order under subsection (4).

(2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme —

- (a) has refused to grant or to procure the grant to him or her of a licence, or has failed to do so within a reasonable period and that in the circumstances it is unreasonable that a licence should not be granted, or
- (b) propose terms for a licence that are unreasonable,

may apply to the Controller for an order under subsection (4).

(3) A case shall be regarded as being excluded from a licensing scheme for the purposes of subsection (2) where —

- (a) the scheme provides for the grant of licences, subject to terms excepting matters from the licence and the case is 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) Where the Controller is satisfied that a claim under this section is well-founded, he or she 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 Controller may determine to be applicable in accordance with the scheme, or, as the case may be, to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

Review of orders made by Controller

271.—(1) Where the Controller has made an order under section 270 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 Controller for a review of that order.

(2) An application under subsection (1) shall not be made except with the special leave of the Controller —

- (a) within 12 months from the date of the order or of the decision on a previous application under this section, or
- (b) where—
- (i) the order was made so as to be in force for 15 months or less, or
 - (ii) as a result of the decision on a previous application under this section the order is due to expire within 15 months of that decision, until the last 3 months before the expiration date.

(3) The Controller shall, on an application for review, confirm or vary his or her order as the Controller 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 Controller as to licensing scheme

272.—(1) A licensing scheme which has been confirmed or varied by the Controller under section 267, 268 or 269 shall be in operation or, as the case may be, remain in operation, in so far as it relates to the description of case in respect of which the order was made, for such period as the order remains in force.

(2) Where an order made by the Controller under section 267, 268 or 269 confirming or varying a licensing scheme is in force (in this section referred to as “an order to which this section applies”), a person who, in a case of a class to which the order applies —

- (a) pay to the operator of the scheme any charges payable under the scheme in respect of a licence applying to the case concerned or, where the amount cannot be

ascertained, gives an undertaking to the operator to pay the charges when ascertained, and

(b) complies with the other terms applicable to the licence under the scheme,

is in the same position as regards infringement of a performer's property rights as if he or she had at all material times been the holder of a licence granted by the rights owner concerned in accordance with the scheme.

(3) The Controller may direct that an order to which this section applies, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference was made, or where later, the date on which the scheme came into operation.

(4) Where a direction is made under subsection (3) —

(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.

(5) Where the Controller has made an order under section 270 and the order remains in force, the person in whose favour the order is made, where he or she —

(a) pay to the operator of the scheme any charges payable in accordance with the order or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and

(b) complies with the other terms specified in the order,

is in the same position as regards infringement of a performer's property rights as if he or she had at all material times been the holder of a licence granted by the rights owner concerned on the terms specified in the order.

REFERENCES AND APPLICATIONS RELATING TO LICENSING BY LICENSING BODIES

General references by licensing bodies

273. Sections 274 to 277 apply to licences in relation to the performer's property rights of more than one performer, granted by a licensing body other than pursuant to a licensing scheme, in so far as the licences relate to any of the acts restricted by a performer's property rights under sections 204 and 205.

Reference to Controller of proposed licence

274.—(1) The terms on which a licensing body proposes to grant a licence may be referred to the Controller by the prospective licensee for a order under subsection (3).

(2) The Controller may refuse to consider a reference under subsection (1) on the ground that the reference is premature.

(3) Where the Controller decides to consider a reference under subsection (1), he or she shall consider the terms of the proposed licence and make an order, confirming or varying the terms, as the Controller may determine to be reasonable in the circumstances.

(4) An order under subsection (3) may be made for such period as the Controller may determine.

Reference to Controller of expiring licence

275.—(1) A licensee under a licence which is due to expire with the passage of time or as a result of notice given by the licensing body may apply to the Controller on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) An application under subsection (1) may be made at any time during the last 3 months before the expiration of the licence.

(3) A licence in respect of which a reference has been made to the Controller under subsection (1) shall remain in force until proceedings in relation to the reference are concluded.

(4) Where the Controller is satisfied that an application made under subsection (1) is well-founded, he or she shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Controller may determine to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

*Application for review of order
made by Controller*

276.—(1) Where the Controller has made an order under section 274 or 275, the licensing body or the person entitled to the benefit of the order may apply to the Controller for a review of that order.

(2) An application under subsection (1) shall not be made except with the special leave of the Controller —

(a) within 12 months from the date of the order or of the decision on a previous application under this section, or

(b) where—

(i) the order was made so as to be in force for 15 months or less, or

- (ii) as a result of the decision on a previous application under this section the order is due to expire within 15 months of that decision, until the last 3 months before the expiration date.

(3) The Controller shall, on an application for review, confirm or vary his or her order as the Controller may determine to be reasonable in the circumstances.

Effect of order of Controller as to licence

277.—(1) Where the Controller has made an order under section 274 or 275, and the order remains in force, the person entitled to the benefit of the order, where he or she —

- (a) pays to the licensing body any charges payable in accordance with the order or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and
- (b) complies with the other terms specified in the order,

is in the same position as regards infringement of a performer's property rights as if he or she had at all material times been the holder of a licence granted by the rights owner concerned on the terms specified in the order.

(2) The benefit of an order made under section 274 or 275 may be assigned —

- (a) in the case of an order made under section 274, where assignment is not prohibited under the terms of the order of the Controller, and
- (b) in the case of an order made under section 275, where assignment was not prohibited under the terms of the original licence.

(3) The Controller may direct that an order made under section 274 or 275 or an order made under section 276 varying such an order, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference or application was made or, where later, the date on which the licence was granted or, as the case may be, was due to expire.

(4) Where a direction is given under subsection (3) —

- (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 further order, as a reference to the charges so payable by virtue of that further order.

LICENSING: MISCELLANEOUS

*General considerations:
unreasonable discrimination*

278.—(1) In determining what is reasonable, on a reference or application under this Chapter relating to a licensing scheme or licence, the Controller 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 his or her powers so as to ensure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

(2) Subsection (1) shall not affect the obligation of the Controller in any case to have regard to all relevant circumstances.

*Licences to reflect payments
in respect of underlying rights*

279. Where a reference or application is made under this Chapter in relation to licensing in respect of the performer's property rights in a recording, the Controller shall take into account, in considering what charges are to be paid for a licence, any payments which the owner of the performer's property right is liable to make pursuant to the granting of the licence, or pursuant to the acts authorised by the licence —

- (a) to owners of the copyright in works included in the recording, or
- (b) in respect of any performance included in the recording.

Chapter 8
Registration of Licensing Bodies
in Respect of Performers' Property Rights

*Register of licensing bodies
for performers' property rights*

280.—(1) The Controller shall establish and maintain a register of licensing bodies in respect of performers' property rights in such form and manner and containing such particulars as the Minister may prescribe to be known as the "Register of Licensing Bodies for Performers' Property Rights" and referred to in this Part as the "Register".

(2) The Controller shall keep the Register in such form that the Register is capable of being used to make a copy of any entry in the Register. f

(3) The Registers shall be kept at such place as may be prescribed by the Minister and, subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance—

- (a) the Registers shall be made available for inspection by a person at such times and in such manner as may be prescribed by the Minister, and
- (b) where a request is made to the Controller for a certified or uncertified copy of, or extract from, an entry in the Register, the Controller shall issue a copy of the entry or extract to the applicant.

(4) An application for registration or renewal of a registration of a licensing body shall be made to the Controller in such form and manner as may be prescribed by the Minister and shall be subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance.

(5) The Controller shall register an applicant or renew a registration where the Controller is satisfied that—

- (a) the applicant complies with the definition of a licensing body specified in section 265, and
- (b) the applicant has provided such information and satisfied such conditions as may be prescribed by the Minister for the purposes of registration.

(6) The information to be prescribed by the Minister under subsection (5) (b) shall include the following:

- (a) the name of the applicant;
- (b) the address of the applicant;
- (c) the names of the chairperson and other members of the board or officers, or names of partners, as the case may be, of the applicant;
- (d) a copy of the memorandum and articles of association or partnership agreement, of the applicant;
- (e) details of the scheme;
- (f) details of the scales of charges or proposed charges to be levied by the applicant; and
- (g) the class of rights owners represented or proposed to be represented by the applicant.

(7) On the registration or renewal of a registration of a licensing body the Controller shall issue to the applicant a certificate of registration in such form as the Controller shall determine.

*Proof that licensing body may act
on behalf of specified classes*

281. A certificate granted under section 280(7) shall include the particulars specified in subsection (6) of that section and the certificate shall be evidence of the right of the licensing body, until the contrary is proved, to act on behalf of the classes of rights owners for whom it claims representation rights or on behalf of the rights owners who have assigned rights to it, or exclusively licensed it, as specified in that certificate.

Notification of charges

282.—(1) A licensing body registered under this Part which proposes to impose a charge, otherwise than in accordance with the scales of charges included in an application for registration or for renewal of a registration, shall provide the Controller in writing with details of the proposed charge not less than one month before the charge comes into effect.

(2) The registration of a licensing body which fails to comply with subsection (1) is deemed to be cancelled from the date on which the proposed charge comes into effect.

Validity of certificates of registration

283.—(1) A certificate of registration issued under section 280(7) shall be valid for a period of 12 months from the date of registration or such lesser period as may be specified by the Controller in the certificate.

(2) Subject to section 280(4), a licensing body registered under this Part may apply for renewal of its registration for further period each of which shall not exceed 12 months.

(3) An application for renewal of a registration shall be made not less than one month before the expiration of the period of validity of the certificate of registration.

(4) A term of renewal of a registration shall take effect from the expiration of the previous registration.

Refusal of application

284.—(1) The Controller may refuse an application for renewal of a registration by a licensing body registered under this Part or cancel the registration of a licensing body where the body no longer fulfils the requirements specified in section 280(5).

(2) The Controller shall remove a licensing body from the Register where its application for renewal of its registration is refused or its registration is cancelled.

Indemnity for Controller

285. No action or other proceedings shall lie or be maintainable against the Controller (except in the case of wilful neglect of duty) in respect of anything done or omitted to be done by him or her in the *bona fide* exercise of any functions, powers or duties conferred or imposed by or under this Chapter.

*Obligation of collecting societies
to register (performers' property rights)*

286.—(1) Any body operating as a licensing body within the meaning specified in section 265 shall be obliged to register in accordance with the provisions of this Chapter, and to remain registered for so long as it continues to operate in this capacity.

(2) Any body to which the provisions of subsection (1) applies which —

- (a) fails within 6 months of the commencement of this Chapter to register under the terms of this Chapter,
- (b) fails within 2 months of its establishment in the case of a body established after the commencement of this Chapter to register under the terms of this Chapter, or
- (c) continues to operate as such a body having been removed from the Register for any reason,

shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) shall be liable —

- (a) on summary conviction, to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

Chapter 9 Qualification: Performances

Definition of qualifying person

287. In this Part, and in Part IV —

“qualifying country” means —

- (a) Ireland,
- (b) another Member State of the EEA, or
- (c) to the extent that an order under section 289 so provides, a country designated under that section;

“qualifying individual” means a citizen or subject of, or an individual domiciled or ordinarily resident in, a qualifying country; and

“qualifying person” means an Irish citizen, or an individual domiciled or ordinarily resident in the State.

Qualifying performance

288. A performance is a qualifying performance for the purposes of the provisions of this Part and Part IV if it is given by a qualifying individual or a qualifying person, or takes place in a qualifying country, territory, state or area, in accordance with this Chapter.

Designation of qualifying countries

289.—(1) The Government may by order designate as a qualifying country enjoying protection under this Part and Part IV any country, territory, state or area, as to which the government is satisfied that provision has been or will be made under its law giving adequate protection for Irish performances.

(2) For the purposes of this section, an “Irish performance” means a performance —

- (a) given by an Irish citizen, or by an individual who is domiciled or ordinarily resident in the State, or
- (b) taking place in the State.

(3) Where the law of that country, territory, state or area provides adequate protection only for certain descriptions of performance, an order under subsection (1) designating that country, territory, state or area may contain provision limiting to a corresponding extent the protection afforded by this Part or Part IV in relation to performances connected with the country, territory, state or area.

Territorial waters and Continental Shelf

290. For the purposes of this Part and Part IV —

- (a) acts undertaken in, on, under or over —
 - (i) the waters in the portion of the sea which comprises the territorial seas of the State,
 - (ii) the waters in all areas of the sea to which the internal or inland waters of the State are extended by section 5 of the Maritime Jurisdiction Act, 1959, and
 - (iii) the waters in any area which is for the time being a designated area within the meaning of section 1 of the Continental Shelf Act, 1968,
 and
- (b) acts undertaken on an Irish ship, aircraft or hovercraft registered under the laws of the State,

shall be deemed to have been undertaken in the State.

Chapter 10 **Duration of Rights in Performances**

Duration of rights

291. The rights conferred by this Part shall expire 50 years from the end of the calendar year in which —

- (a) the performance takes place, or
- (b) where within that period a recording of the performance is lawfully made available to the public, that recording is first so lawfully made available to the public. c.

Chapter 11 **Performers' Property Rights**

Performers' property rights

292.—(1) The rights conferred on a performer by sections 204, 205, 206 and 207 are property rights and shall be known and in Parts III and IV referred to as “performers’ property rights”.

(2) 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 the purposes of Parts III and IV is the person who is entitled to the aspect of those rights relevant for those purposes.

(3) Where a performer’s property rights (or any aspect of them) are owned jointly by more than one person, references in this Part to the rights owner shall include reference to all those owners, such that, in particular, any requirement of the licence of the rights owner requires the licence of all of them.

(4) References in Parts III and IV to the consent of a performer shall be construed in relation to the performer’s property rights as references to the consent of the rights owner.

Chapter 12 **Transmission of Performers' Property Rights**

Assignment and licences

293.—(1) A performer’s property rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) A transmission of a performer’s property rights by assignment, by testamentary disposition or by operation of law may be partial, so as to apply —

- (a) to one or more but not all of the acts a performer has the right to authorise or prohibit, or
- (b) to part but not the whole of the period for which the rights in the performance are to subsist.

(3) An assignment of a performer's property rights, whether in whole or in part, is not effective unless it is in writing and 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 or her 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 Part to undertaking any act with or without the licence of the rights owners shall be construed accordingly.

(5) A licence granted by a prospective owner of a performer's property rights is binding on every successor in title to his or her 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, and references in this Part to undertaking any act with or without the licence of the rights owner shall be construed accordingly.

*Prospective ownership
of performers' property rights*

294.—(1) Where, by an agreement made in relation to a performer's property rights in respect of a future performance and signed by or on behalf of the performer, the performer purports to assign his or her rights in such a performance, whether in whole or in part, to another person, then where, on the rights coming into existence, the assignee or his or her successor in title or another person claiming under him or her would be entitled as against all other persons to require the rights to be vested in him or her, the rights shall vest in the assignee or his or her successor in title under this section or any other person claiming under him or her.

(2) Where, at the time when any performer's property right comes into existence, the person who, if he or she were then living, would be entitled to the right is dead, the right shall devolve as if it had existed immediately before his or her death and he or she had then been the owner of the right.

(3) The rights of an assignee in a future performance shall not be prejudiced by the fact that the agreement referred to in subsection (1) was made before the commencement of this section.

(4) In this Part —

“future performance” means any performance which will or may take place at some date in the future;

“prospective owner”, in relation to a performer’s property rights, includes a person who is prospectively entitled to those rights by virtue of an agreement referred to in subsection (1).

Exclusiveness

295.—(1) In this Part an “exclusive licence” means a licence in writing which is signed by or on behalf of an owner or prospective owner of a performer’s property rights 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 rights owner and reference to an exclusive licensee shall be construed accordingly.

(2) An exclusive licensee has the same rights against a successor in title who is bound by the licence as he or she has against the person granting the licence.

*Performers’ property rights
to pass under will with
certain original recordings*

296. Where, under a bequest (whether specific or general), a person is entitled, beneficially or otherwise, to any material thing containing an original recording of a performance which had not been made available to the public before the death of the testator, the bequest shall be construed as including any performer’s property rights in relation to the recording in so far as the testator was the owner of the rights immediately before his or her death, unless a contrary intention is indicated in the will of the testator or in a codicil to that will.

*Presumption of transfer of rental right
in case of film production agreement*

297.—(1) Without prejudice to the right of a performer to receive equitable remuneration in respect of a rental right, 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 by virtue of the inclusion of a recording of his or her performance in the film. less

(2) Where a presumption of transfer of the rental right arises by virtue of subsection (1), the absence of a signature by or on behalf of the performer shall not restrict the operation of section 293 or 294.

(3) The reference in subsection (1) to an agreement concluded between a performer and a film producer includes any agreement whether made by them directly or through intermediaries. d

(4) The right to equitable remuneration on the transfer of the rental right applies where there is a presumed transfer under this section as in the case of an actual transfer.

*Right to equitable remuneration
where rental right is transferred*

298.—(1) Without prejudice to the generality of section 297, where a performer has transferred his or her rental right he or she retains the right to equitable remuneration for the rental.

(2) The right to equitable remuneration conferred by this section shall not be waived by the performer and the performer shall not assign the right to equitable remuneration except to a collecting society for the purpose of enabling the collecting society to exercise that right on his or her behalf.

(3) The right to equitable remuneration is transmissible by way of testamentary disposition or by operation of law, as personal or moveable property and it may be further transmitted, including by assignment, by any person who legally acquires the right.

(4) Equitable remuneration under this section is payable by the person to whom the rental right is transferred or any successor in title.

(5) Subject to section 299, the amount payable by way of equitable remuneration is that which has been agreed by or on behalf of the persons by and to whom it is payable.

(6) An agreement is void in so far as it purports to exclude or restrict the right to equitable remuneration conferred by this section.

(7) References in this Part to the transfer of the rental right by one person to another include any arrangement having that effect whether made by them directly or through intermediaries.

(8) In this section “collecting society” means a society or other organisation which has as one of its main objects the exercise of the right to collect equitable remuneration under this section on behalf of more than one performer.

*Equitable remuneration:
reference of determination of amount
to Controller*

299.—(1) In default of agreement as to the amount of equitable remuneration payable under section 298, the person by or to whom it is payable may apply to the Controller for an order under subsection (4).

(2) Subject to subsection (3), a person by or to whom equitable remuneration is payable under section 298 may also apply to the Controller —

- (a) to vary any agreement as to the amount payable, or
- (b) to vary any previous determination of the Controller as to the amount payable.

(3) An application may not be made under subsection (2) within 12 months from the date of the previous determination except with the special leave of the Controller.

(4) On an application being made under this section the Controller shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as he or she may determine to be reasonable in the circumstances, having regard to the importance of the contribution of the performer.

(5) An order made under subsection (4) shall have effect from the date on which it is made or such later date as may be specified by the Controller.

(6) Remuneration shall not be considered inequitable because it is paid by way of a single payment or at the time of transfer of the rental right.

(7) An agreement is void in so far as it purports to prevent a person challenging the amount of equitable remuneration or to restrict the powers of the Controller under this section.

Chapter 13 **Transmission of Recording Rights** **and Performers' Non-Property Rights**

Performers' non-property rights

300.—(1) The rights conferred on a performer by sections 203, 209 and 212 are non-property rights and shall be known and in Parts III and IV referred to as “performers’ non-property rights”.

(2) A performer’s non-property rights are not assignable or transmissible, except to the extent provided for in subsection (3).

(3) On the death of a person entitled to a performer’s non-property rights —

- (a) the rights pass by testamentary disposition to such person as the person entitled to the right may direct, and
- (b) where there is no such direction, the right is exercisable by the personal representatives of the person entitled to the right.

(4) References in Parts III and IV to the performer, in the context of the person having any right referred to in subsection (1), shall be construed as references to the person for the time being entitled to exercise those rights.

(5) Where, under subsection (3) (a), a right becomes exercisable by more than one person, it is exercisable by each of them.

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

*Transmissibility of rights
of person having recording rights*

301.—(1) The rights conferred by this Part on a person having recording rights in relation to a performance are not assignable or transmissible.

(2) Subsection (1) shall not affect the operation of section 215(2) (b) or section 215(3)(b) in so far as those provisions confer rights under this Part on a person to whom the benefit of a contractor licence is assigned.

Consent

302.—(1) For the purposes of this Part and Part IV, consent 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 relation to a performance shall be bound by any consent given by a person through whom he or she derives his or her rights under the exclusive recording contractor licence concerned, in the same way as if the consent had been given by him or her.

(3) Where a performer's non-property right passes to another person, any consent binding on the person previously entitled to the right binds the person to whom the right passes in the same way as if the consent had been given by him or her.

**Chapter 14
Remedies:
Owner of Performers' Property Rights**

Infringement actionable by rights owner

303.—(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 under this section all relief by way of damages, injunctions, account of profits or otherwise is available to the plaintiff as it is available in respect of the infringement of any other property right.

(3) Where, in an action for infringement of a performer's property rights, the defendant does not admit that the plaintiff is owner of the performer's property rights, the court may direct that evidence in relation to ownership of the performer's property rights be given on

affidavit and the court may decide the issue on consideration of any affidavit presented to it unless it is satisfied that any conflict of evidence between the affidavits may not be resolved other than by hearing oral testimony in which case the court may order that oral evidence may be adduced.

(4) Hearsay evidence may be accepted for the purposes of any hearing under subsection (3).

Award of damages in infringement action

304.—(1) The court may, in an action for or infringement of a performer's property right awards such damages as, having regard to all the circumstances of the case, it considers just.

(2) Without prejudice to any other remedy, 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 recordings to which the action relates, the plaintiff is not entitled to damages against the defendant.

(3) In exercising its powers under subsection (1) in addition to or as an alternative to compensating the plaintiff for financial loss, the court may award aggravated or exemplary damages or both aggravated and exemplary damages.

Undertakings concerning licences of right

305.—(1) Where, in proceedings for infringement of a performer's property rights in respect of which a licence is available as of right, the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Controller —

- (a) no injunction shall be granted against the defendant,
- (b) no order for delivery up shall be made under section 255, and
- (c) the amount recoverable against the defendant by way of damages or on an account of profits shall not exceed three times the amount which would have been payable by the defendant as licensee where a licence on those terms had been granted before the earliest infringement.

(2) An undertaking under subsection (1) may be given at any time before the final order in the proceedings without any admission of liability.

(3) Nothing in this section shall affect the remedies available in respect of an infringement committed before a licence was available as of right.

Chapter 15 Rights and Remedies: Exclusive Licensee

Rights and remedies of exclusive licensee

306.—(1) An exclusive licensee has, except as against the owner of the 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) The rights and remedies of an exclusive licensee are concurrent with those of the rights owner and references in sections 255, 256, 303, 304 and 305 to the rights owner shall be construed accordingly.

(3) In proceedings brought by an exclusive licensee under this section a defendant may avail of any defence which would have been available to the defendant if the action had been brought by the rights owner.

Exercise of concurrent rights

307.—(1) Where an action for infringement of a performer's property rights brought by the rights owner or an exclusive licensee relates, whether in whole or in part, 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 appropriate 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 under subsection (1) shall not be liable for any costs in an action unless she or he takes part in the proceedings.

(3) Nothing in this section shall affect the granting of interlocutory relief on an application by the rights owner or exclusive licensee.

(4) Where an action for infringement of a performer's property rights is brought which relates, whether in whole or in part, to an infringement in respect of which the rights owner and an exclusive licensee have or had concurrent rights of action —

- (a) in assessing damages the appropriate court shall have regard to —
 - (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 where an award of damages has been made, or an account of profits has been directed, in favour of one of them in respect of the infringement; and
- (c) the appropriate court shall, where an account of profits is directed, apportion the profits between them as the appropriate court thinks fit, subject to any agreement between the rights owner and the exclusive licensee.

(5) Subsection (4) shall apply whether or not the rights owner and the exclusive licensee are both parties to the action.

(6) Before —

- (a) applying for an order for delivery up under section 255,
- (b) applying for an order to seize illicit recordings, articles or devices under section 256, or
- (c) exercising the right to seize and detain conferred by section 257,

the rights owner shall notify any exclusive licensee having concurrent rights and the appropriate court may, on the application of the licensee, make such order for delivery up, seizure of illicit recordings, articles or devices or, as the case may be, prohibiting or permitting the exercise by the rights owner of the right to seize and detain, as it thinks fit, having regard to the terms of the licence between the rights owner and the exclusive licensee.

Chapter 16
Remedies:
Owner of Performers' Non -Property Rights
and Person Having Recording Rights

*Infringement actionable
as a breach of statutory duty*

308.—(1) An infringement of —

- (a) a performer's non -property rights, or
- (b) any right conferred by this Part on a person having recording rights,

is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) A person may apply to the appropriate court for damages or other relief in respect of an infringement of a right referred to in subsection (1).

PART IV
PERFORMERS' MORAL RIGHTS

Paternity right

309.—(1) Subject to the exceptions specified in section 310, a performer shall, where practicable, have the right to be identified as the performer of his or her performance.

(2) Where a performer uses a pseudonym, initials or other form of identification that form shall be used to identify his or her performance.

(3) The right conferred by this section shall be known and in this Part referred to as the “paternity right”.

Exception to paternity right

310.—(1) The paternity right shall not be infringed by anything done under section 222, 223(2), 237 or 238.

(2) The paternity right shall not apply in relation to a performance or a recording of a performance made for the purpose of reporting current events.

Integrity right

311.—(1) Subject to the exceptions specified in section 312, a performer shall have the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his or her performance or a recording thereof, which would prejudice his or her reputation.

(2) The right conferred by this section shall be known and in this Part referred to as the “integrity right”.

Exception to integrity right

312.—(1) Subject to subsection (2), the integrity right shall not apply in relation to a performance or a recording of a performance made for the purpose of reporting current events.

(2) The integrity right is not infringed by anything done for the purposes of—

- (a) avoiding any contravention of civil or criminal law,
- (b) complying with a duty imposed by or under an enactment, or
- (c) in the case of authorised broadcasters or authorised cable programme service providers, avoiding the inclusion in a programme which is broadcast or included in a cable programme service by those broadcasters or providers, of anything which offends public morality or which is likely to encourage or incite to crime or to lead to public disorder.

(3) Subsection (2) shall not apply unless the performer is identified at the time of the act concerned or has previously been identified in or on recordings of the performance which have been lawfully made available to the public and there is a sufficient disclaimer.

(4) In this Part “sufficient disclaimer”, in relation to an act capable of infringing the integrity right, means a clear and reasonably prominent indication given at the time of the act, or where the performer is then identified, appearing along with the identification, that the recording has been subjected to an action to which the performer has not consented.

*Secondary infringement of integrity right:
possessing or dealing*

313. A person infringes the integrity right where he or she —

- (a) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (b) imports into the State, other than for his or her private and domestic use,
- (c) in the course of a business, trade or profession, has in his or her possession, custody or control, or
- (d) makes available to the public,

a recording of a performance which has, and which he or she knows or has reason to believe has, been subjected to any distortion, mutilation or other modification or other derogatory action within the meaning of section 311.

False attribution of performances

314.—(1) A person has the right not to have a performance falsely attributed to him or her as performer.

(2) The right conferred by subsection (1) is infringed by a person where he or she —

- (a) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (b) imports into the State, other than for his or her private and domestic use,
- (c) in the course of a business, trade or profession, has in his or her possession, custody or control, or
- (d) makes available to the public,

a recording of a performance, in or on which there is a false attribution, knowing or having reason to believe that the attribution is false.

(3) The right conferred by subsection (1) is infringed by a person where he or she —

- (a) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (b) imports into the State, other than for his or her private and domestic use,
- (c) in the course of a business, trade or profession, has in his or her possession, custody or control, or
- (d) makes available to the public,

a recording of a performance which has been altered as being a recording of the unaltered performance, knowing or having reason to believe that the recording has been altered.

(4) In this Part, “attribution”, in relation to a performance, means a statement, express or implied, as to who is the performer.

Duration of moral rights

315. The rights conferred by this Part shall expire 50 years from the end of the calendar year in which —

- (a) the performance takes place, or
- (b) where within that period a recording of the performance is lawfully made available to the public, that recording is first so lawfully made available to the public.

Waiver of rights

316.—(1) Subject to subsection (3), any of the rights conferred by this Part may be waived.

(2) A waiver made under this section shall be in writing and signed by the person waiving the right.

(3) A waiver made under subsection (1) —

- (a) may relate to a specific performance or a recording thereof, to performances or recordings thereof of a specified description or to performances or recordings thereof generally, and may relate to existing or future performances or recordings thereof, and
- (b) may be conditional or unconditional, and may be expressed to be subject to revocation,

and where a waiver is made in favour of the owner or prospective owner of the rights in the performance or recording thereof, or performances or recordings thereof, to which it relates, that waiver shall be presumed to extend to his or her licensees, successors in title or other persons, claiming under them unless a contrary intention is expressed.

(4) Nothing in this Part 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 referred to in subsection (1).

(5) It shall not be an infringement of any of the rights conferred by this Part for a person to undertake any act where the person entitled to the right conferred by this Part has consented to the use of those rights by that other person.

*Performers' moral rights
not assignable or alienable*

317. The rights conferred by this Part shall be incapable of assignment or alienation.

Transmission of moral rights on death

318.—(1) On the death of a person entitled to the paternity right or the integrity right —

- (a) the right passes by testamentary disposition to such person as the person entitled to the right may direct,

- (b) where there is no direction as to whom the right passes but the performer's property rights in the recording of the performance concerned forms part of an estate, the right passes to the person to whom the performer's property rights pass, and
- (c) where the right does not pass under paragraph (a) or (b), it is exercisable by the personal representatives of the person entitled to the right.

(2) Where a performer's property rights forming part of an estate pass in part to one person and in part to another, so as to apply —

- (a) to one or more, but not all, of the acts the rights owner has the right to authorise or prohibit, or
- (b) to part, but not the whole, of the period for which the performer's property rights are to subsist,

any right which passes with the performer's property rights by virtue of subsection (1) is divided accordingly.

(3) Where, under subsection (1), a right becomes exercisable by more than one person—

- (a) it may, in the case of the paternity right, be exercised by any of them,
- (b) it is, in the case of the integrity right, exercisable by each of them, and
- (c) any waiver of the right under section 316 made by one of them shall not affect the rights of the other persons.

(4) A consent or waiver binds any person to whom a right passes under subsection (1).

(5) An infringement of the right conferred by section 316 in relation to a false attribution of a performance after the death of a person is actionable by the personal representatives of that person. 1

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

Remedies for infringement of moral rights

319.—(1) An infringement of the rights conferred by section 309, 311 or 314 is actionable as a breach of statutory duty owed to the person entitled to the right concerned.

(2) A person may apply to the appropriate court for damages or other relief in respect of an infringement of a right conferred by section 309, 311 or 314.

(3) In proceedings for infringement of the right conferred by section 311, the appropriate court may grant an injunction prohibiting any act unless a sufficient disclaimer is made, on such terms and in such a manner as is approved of by the court, dissociating the e

person entitled to the right from the treatment of the performance of a recording of the performance.

PART V
DATABASES

Chapter 1
Rights in Databases

Interpretation

320.—(1) In this Part —

“extraction”, in relation to the contents of a database, means the permanent or temporary transfer of all or a substantial part of the contents to another medium by any means or in any form;

“insubstantial”, in relation to the contents of a database, shall be construed subject to section 324(3);

“investment” includes any investment, whether of financial, human or technical resources and cognate words shall be construed accordingly;

“jointly”, in relation to the making of a database which is made jointly, shall be construed as referring to all the makers of the database;

“lawful user”, in relation to a database, means any person who, whether under a licence to undertake any of the acts restricted by any database right in the database, or otherwise, has a right to use the database;

“re-utilisation”, in relation to the contents of a database, means making those contents available to the public by any means;

“substantial”, in relation to the investment, extraction or re-utilisation, means substantial in terms of quantity or quality or a combination of both.

(2) The making of a copy of a database available for use, on terms that it is to be returned after a limited period of time, otherwise than for direct or indirect economic or commercial advantage, through an establishment to which the public have access that is prescribed by the Minister for the purpose of section 58, shall not be taken for the purposes of this Part to constitute extraction or re-utilisation of the contents of the database.

(3) Where the making of a copy of a database available through an establishment to which members of the public have access and that is prescribed by the Minister for the purpose of section 58 gives rise to a payment the amount of which does not exceed that which is necessary to cover the operating costs of the establishment there is no direct or indirect economic or commercial advantage for the purposes of subsection (2).

(4) Subsection (2) shall not apply to the making of a copy of a database available for on the spot reference use.

(5) Where a copy of a database has been sold within the Member States of the EEA by, or with the consent of, the owner of the database right in the database, the further sale within the Member States of the EEA of that copy for the purposes of this Part shall not be taken to constitute extraction or re-utilisation of the contents of the database.

Chapter 2 **Subsistence of Database Right**

Database right

321.—(1) A property right to be known and in this Part referred to as the “database right” subsists, in accordance with this Part, in a database where there has been a substantial investment in obtaining, verifying or presenting the contents of the database.

(2) Subject to this Act, the owner of the database right may undertake or authorise others to undertake certain acts in the State in relation to the database, being acts which are designated by this Act as acts restricted by the database right.

(3) For the purposes of this section it is immaterial whether or not the database or any of its contents is a copyright work.

(4) The database right shall not subsist in a database unless the requirements specified in this Part with respect to qualification are complied with.

Chapter 3 **Maker and Ownership: Databases**

Maker of database

322.—(1) Subject to the provisions of this section, the person who takes the initiative in obtaining, verifying or presenting the contents of a database and assumes the risk of investing in that obtaining, verification or presentation shall be regarded as the maker of, and as having made, the database.

(2) Where a database is made by an employee in the course of employment, his or her employer shall be regarded as the maker of the database, subject to any agreement to the contrary.

(3) Subject to subsection (4), where a database is made by an officer or employee of the Government in the course of his or her duties, the Government shall be regarded as the maker of the database.

(4) Where a database is made by or under the direction or control of either or both of the Houses of the Oireachtas —

- (a) the House by whom, or under whose direction or control, the database is made shall be regarded as the maker of the database, and
- (b) where the database is made by or under the direction or control of both Houses, both Houses shall be regarded as the joint makers of the database.

(5) For the purposes of this Part, a database is made jointly where two or more persons acting together in collaboration take the initiative in obtaining, verifying or presenting the contents of the database and assume the risk of investing in that obtaining, verification or presentation.

(6) Where a database is made by an organisation prescribed by the Minister under section 196(2), or by an officer or employee of such an organisation in the course of his or her duties, that organisation shall be regarded as the maker of the database.

(7) Where the database right is conferred on a person by an enactment that person shall be regarded as the maker of the database.

First ownership of database right

323. The maker of a database shall be the first owner of the database right in the database.

Chapter 4 Restricted Acts: Databases

Acts restricted by database right

324.—(1) Subject to the exceptions specified in Chapter 8 of this Part and to the provisions relating to licensing in Chapter 11 of this Part, the owner of the database right has the right to undertake or to authorise others to undertake all or any of the following acts in relation to all or a substantial part of the contents of a database —

- (a) extraction, or
- (b) re-utilisation,

and those acts shall be known and in this Part referred to as “acts restricted by the database right”.

(2) The database right is infringed by a person who, without the licence of the owner of the database right, undertakes, or authorises another to undertake, either of the acts restricted by the database right.

(3) For the purposes of this Part, the repeated and systematic extraction or re-utilisation of insubstantial parts of the contents of a database which conflicts with the normal exploitation of the database or which prejudices the interests of the maker of the database shall be deemed to be extraction or re-utilisation of a substantial part of those contents.

Chapter 5 Duration of Database Right

Term of protection of database right

325.—(1) The database right shall expire 15 years from the end of the calendar year in which the making of the database was completed.

(2) Where a database is lawfully re-utilised before the expiration of the period referred to in subsection (1), the database right in the database shall expire 15 years from the end of the calendar year in which the database was first so re-utilised.

(3) Any substantial change to the contents of a database, including a substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment shall qualify the database resulting from that investment for its own term of protection under this section.

(4) This section applies notwithstanding paragraph 45 of the First Schedule.

Chapter 6 Qualification: Databases

Qualification for database right

326.—(1) Subject to Chapter 2 of this Part, the database right shall subsist in a database where, at the material time, its maker or, where it was made jointly, one or more of its makers, is—

- (a) a citizen or subject of, or other individual domiciled or ordinarily resident in, a Member State of the EEA,
- (b) a body incorporated under the law of a Member State of the EEA and which at the material time satisfied one of the conditions specified in subsection (3), or
- (c) a partnership or unincorporated body formed under the law of a Member State of the EEA and which at the material time satisfied the condition specified in subsection (3) (a).

(2) The database right shall subsist in a database the maker of which is deemed to be the Government, or either or both of the Houses of the Oireachtas, or a prescribed international organisation, in accordance with section 322.

(3) The conditions referred to in paragraphs (b) and (c) of subsection (1) are—

- (a) that the body has its principal place of business or operations within a Member State of the EEA,

- (b) that the body has its registered office within a Member State of the EEA and operates in a Member State of the EEA, and
- (c) that the body has a genuine link with the economy of the State.

(4) The Government may by order extend the provisions of this section to countries, territories, states or areas outside the Member States of the EEA, where the order is made pursuant to or in conformity with an agreement of the Council of the European Communities allowing such an extension of protection on the basis that comparable protection of databases is available under the law of those countries, territories, states or areas.

(5) For the purposes of this section, the material time in relation to a database shall be —

- (a) in the case of a database which has not been lawfully re-utilised when the database was made or, where the making of the database extended over a period, a substantial part of that period, or
- (b) in the case of a database which has been lawfully re-utilised when the database was first lawfully re-utilised or, where the maker had died before that time, immediately before his or her death.

Chapter 7

Rights and Obligations of Lawful Users

Avoidance of certain terms affecting lawful users

327.—(1) Without prejudice to section 324(3), a lawful user of a database shall be entitled to extract or re-utilise insubstantial parts of the contents of the database for any purpose.

(2) Where, under an agreement, a person has a right to use a database, any term or condition in the agreement shall be void in so far as it purports to prevent that person from extracting or re-utilising insubstantial parts of the contents of the database for any purpose.

(3) While exercising the entitlement conferred by subsection (1), a lawful user of a database shall not prejudice the owner of any right conferred by this Act in respect of works or other subject matter contained in the database.

Chapter 8

Acts Permitted in Respect of Database Right

Exemptions in respect of databases

328. In this Part an act may be exempted under more than one category of exemption and the exemption of an act under one category of exemption shall not preclude its exemption under another category.

Fair dealing: research or private study

329.—(1) The database right in a non -electronic database which has been re -utilised is not infringed by fair dealing with a substantial part of its contents by a lawful user of the database where that part is extracted for the purposes of research or private study.

(2) For the purposes of this Part “fair dealing” means the extraction of the contents of a database by a lawful user to an extent which will not unreasonably prejudice the interests of the rights owner.

EDUCATION

Exception for educational establishments

330.—(1) The database right in a database is not infringed by fair dealing with a substantial part of its contents by a lawful user of the database where that part is extracted for the purposes of illustration in the course of instruction or of preparation for instruction and where—

- (a) the extraction is done by or on behalf of a person giving or receiving instruction, and
- (b) the source is indicated.

(2) For the purposes of this section “lawful user” includes an educational establishment.

PUBLIC ADMINISTRATION

Parliamentary or judicial proceedings

331. The database right in a database is not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting those proceedings.

Statutory inquiries

332.—(1) The database right in a database is not infringed by anything done for the purposes of a statutory inquiry or for the purpose of reporting any such inquiry.

(2) The database right in a database is not infringed by the making available of copies of a report of a statutory inquiry containing the contents of the database.

Copying of material in public records

333. All or a substantial part of the contents of a database which are comprised in records which are open to public inspection may be extracted or re-utilised without infringing the database right in the database.

*Material open to public inspection
on a statutory register*

334.—(1) Without prejudice to the generality of section 333, where the contents of a database are open to public inspection pursuant to a statutory requirement, or are on a statutory register, the database right in the database is not infringed by the extraction of all or a substantial part of the contents, for a purpose which does not involve re-utilisation of all or a substantial part of the contents as contains factual information of any description, by or with the authority of the person required to make the contents of the database open to public inspection or, as the case may be, the person maintaining the register.

(2) Where the contents of a database are open to public inspection pursuant to a statutory requirement, or are on a statutory register, the database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents for the purpose of enabling the contents of the database to be inspected at another time or place, or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed, by or with the authority of the person required to make the contents of the database open to public inspection or, as the case may be, the person maintaining the register.

(3) Where all or a substantial part of the contents of a database are re-utilised under this section the person granting access to the contents of the database shall ensure that those contents bear a mark clearly indicating that they are provided for the purpose of inspection and that no other use of the contents of the database may be made without the licence of the owner of the database right.

(4) All or a substantial part of the contents of a database may not be provided under this section unless the person granting access to the contents of the database has first obtained from the person requesting the contents of the database a declaration, in such form as may be prescribed, indicating that the contents of the database are required for the sole purpose of enabling the contents of the database to be inspected at another time or place or to otherwise facilitate the exercise of the right of public inspection.

(5) Where the contents of a database which are open to public inspection pursuant to a statutory requirement, or are on a statutory register, contain information about matters of general, scientific, technical, commercial or economic interest, the database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents for the purpose of disseminating that information, by or with the authority of the person required to make the contents of the database open to public inspection or, as the case may be, the person maintaining the register.

(6) The Minister may prescribe the conditions which a database must be complied with before the contents of a database are made available to the public.

(7) The Minister may by order provide that subsections (1) to (5) apply —

(a) to the contents of a database made open to public inspection by —

- (i) an international organisation specified in the order, or
 - (ii) a person specified in the order who has functions in the State under an international agreement to which the State is a party,
- or

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

as they apply in relation to the contents of a database open to public inspection pursuant to a statutory requirement, or on a statutory register.

*Databases communicated to Government
or Oireachtas*

335.—(1) Where the contents of a database have been communicated to the Government or either or both of the Houses of the Oireachtas for any purpose, by or with the licence of the owner of the database right, and any fixation or any thing containing the contents of the database is owned by, or is in the custody, possession or control of the Government or either or both of the Houses of the Oireachtas, the Government or either or both of the Houses of the Oireachtas may extract or re-utilise all or a substantial part of the contents, for the purpose for which the contents of the database were communicated to them, or for any related purpose which could reasonably have been anticipated by the owner of the database right, without infringing the database right in the database.

(2) The Government or either or both of the Houses of the Oireachtas shall not re-utilise all or a substantial part of the contents of a database or cause the contents to be extracted or re-utilised, by virtue of this section, where the contents have previously been lawfully re-utilised otherwise than under this section.

Acts done under statutory authority

336.—(1) Where the undertaking of a particular act is specifically authorised by an enactment then, unless the enactment provides otherwise, the undertaking of that act shall not infringe the database right in a database. t

(2) Nothing in this section shall be construed as excluding any defence available under any enactment.

ANONYMOUS OR PSEUDONYMOUS DATABASE

*Anonymous or pseudonymous databases:
acts permitted*

337.—(1) The database right in a database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents of the database when, or pursuant to arrangements made when —

- (a) it is not possible by reasonable inquiry to ascertain the identity of the maker of the database, and
- (b) it is reasonable to assume that the database right has expired.

(2) In the case of a database made jointly, the reference in subsection (1), to the possibility of ascertaining the identity of the maker of the database shall be construed as a reference to its being possible to ascertain the identity of any of its makers.

Chapter 9 **Application of Copyright Provisions** **to Database Right**

Application of copyright provisions to database right

338. Sections 120, 121, 122, 123, 127, 128, 130, 131, 132, 133, 135 and 136 shall apply in relation to the database right and databases in which that right subsists as they apply in relation to copyright and copyright works.

Chapter 10 **Presumptions**

Presumptions relevant to database right

339.—(1) The presumptions specified in this section shall apply in proceedings, whether civil or criminal, for infringement of the database right in any database.

(2)(a) The database right shall be presumed to subsist in a database unless the contrary is proved.

(b) Except as otherwise provided in this section, where the subsistence of the database right in a database is proved or admitted, or is presumed under paragraph (a), the plaintiff shall be presumed to be the owner or, as the case may be, the exclusive licensee of the database right, unless the contrary is proved.

(3) Where —

- (a) a name purporting to be that of the maker of a database or of the owner or exclusive licensee of the database right, as the case may be, appears on a copy of the database, or

- (b) a copy of a database bears or incorporates a statement, label or other mark indicating that a person is the maker of the database or the owner or exclusive licensee of the database right, as the case may be,

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

(4) The person named or in respect of whom a statement, label or other mark appears on or is borne on or is incorporated in copies of a database in accordance with subsection (3) shall be presumed not to have made the database —

- (a) in the course of employment referred to in section 322(2),
 (b) in the course of employment as an officer or employee of a prescribed international organisation referred to in section 322(6),
 (c) in the course of employment as an officer or employee of the Government referred to in section 322(3),
 (d) under the direction or control of either or both of the Houses of the Oireachtas referred to in section 322(4), or
 (e) in circumstances in which the database right is conferred on another person by an enactment referred to in section 322(7).

(5) Where a database purports to be a database made jointly, subsections (2), (3) and (4) shall apply in relation to each person purporting to be one of the makers of the database.

Chapter 11 Database Right: Licensing

Licensing schemes and licensing bodies

340.—(1) In this Part —

“licences” means licences to extract or re-utilise all or a substantial part of the contents of a database or to authorise other to do so;

“licensing body” means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, either as owner or prospective owner of a database right, or as exclusive licensee, or as agent for him or her, of database right licences, and whose objects include the granting of licences relating to the databases of more than one database right owner;

“licensing scheme” means a scheme specifying—

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf that operator acts, is willing to grant database right licences, and
 (b) the terms on which licences would be granted in those classes of case,

and for the purposes a “scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff for any other name.

(2) References in this Part to licences or licensing schemes relating to databases of more than one database right owner shall not include licences or schemes relating to databases made by, or by employees of, or commissioned by, a single individual, firm, company or group of companies, including holding companies and their subsidiaries.

REFERENCES AND APPLICATIONS
RELATING TO LICENSING SCHEMES

General references

341. Sections 342 to 347 apply to licensing schemes which are operated by licensing bodies in relation to the database right in databases of more than one database right owner, in so far as they relate to licences for the extraction or re-utilisation of all or a substantial part of the contents of a database.

*Reference of proposed licensing scheme
to Controller*

342.—(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Controller by an Organisation which claims to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply.

(2) The Controller shall not consider a reference by an organisation under subsection (1) unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) The Controller may refuse to consider a reference under subsection (1) on the ground that the reference is premature.

(4) Where the Controller decides to consider a reference under subsection (1) he or she shall consider the subject matter of the reference and make an order, either confirming or varying the proposed scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

Reference of licensing scheme to Controller

343.—(1) Where a licensing scheme is in operation and a dispute arises with respect to the scheme between the operator of the scheme and —

- (a) a person claiming that he or she requires a licence in a case of a description to which the scheme applies, or

(b) an organisation claiming to be representative of such persons,

that the operator, person or organisation may refer the scheme to the Controller insofar as it relates to cases of that description.

(2) The Controller shall not consider a reference by an organisation under subsection (1) unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) A scheme which has been referred to the Controller under subsection (1) shall remain in operation until proceedings in relation to the reference are concluded.

(4) The Controller shall consider the matter referred to him or her and shall make an order, confirming or varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

Further reference of scheme to Controller

344.—(1) Where the Controller has, in respect of a licensing scheme under section 342 or 343 or under this section, made an order in respect of a scheme, and the order remains in force, the person to whom this section applies may refer the scheme to the Controller insofar as it relates to cases of that description.

(2) This section applies to —

- (a) the operator of the scheme,
- (b) a person claiming that he or she requires a licence in a case of the description to which the order applies, and
- (c) an organisation claiming to be representative of such persons.

(3) Where an order made under section 342 or 343 or this section is in force the licensing scheme in respect of which the order is made shall not, except with the special leave of the Controller, be referred to the Controller in respect of the same description of cases —

- (a) within 12 months from the date of the order in respect of the previous reference, or
- (b) where the order was made so as to be in force for 15 months or less, until the last 3 months before the expiration of the order.

(4) A scheme which has been referred to the Controller under subsection (1) shall remain in operation until proceedings in relation to the reference are concluded.

(5) The Controller shall consider the matter referred to him or her and shall make an order confirming, varying or further varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(6) An order under subsection (5) may be made for such period as the Controller may determine.

*Application for grant of licence
in connection with licensing scheme*

345.—(1) A person who claims, in a case to which a licensing scheme relates, that the operator of the scheme has refused to grant or to procure the grant to him or her of a licence in accordance with the scheme, or has failed to do so within a reasonable period, may apply to the Controller for an order under subsection (4).

(2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme —

- (a) has refused to grant or to procure the grant to him or her of a licence, or has failed to do so within a reasonable period and that in the circumstances it is unreasonable that a licence should not be granted, or
- (b) propose terms for a licence that are unreasonable,

may apply to the Controller for an order under subsection (4).

(3) A case shall be regarded as being excluded from a licensing scheme for the purposes of subsection (2) where —

- (a) the scheme provides for the grant of licences, subject to terms excepting matters from the licence and the case is 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) Where the Controller is satisfied that a claim under this section is well-founded, he or she 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 Controller may determine to be applicable in accordance with the scheme, or, as the case may be, to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

Review of orders made by Controller

346.—(1) Where the Controller has made an order under section 345 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 Controller for a review of that order.

(2) An application under subsection (1) shall not be made except with the special leave of the Controller —

- (a) within 12 months from the date of the order or of the decision on a previous application under this section, or
- (b) where—
 - (i) the order was made so as to be in force for 15 months or less, or
 - (ii) as a result of the decision on a previous application under this section the order is due to expire within 15 months of that decision, until the last 3 months before the expiration date.

(3) The Controller shall, on an application for review, confirm or vary his or her order as the Controller 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 Controller
as to licensing scheme*

347.—(1) A licensing scheme which has been confirmed or varied by the Controller under section 342, 343 or 344 shall be in operation, or as the case may be, remain in operation, in so far as it relates to the description of case in respect of which the order was made, for such period as the order remains in force.

(2) Where an order made by the Controller under section 342, 343 or 344 confirming or varying a licensing scheme is in force (in this section referred to as an “order to which this section applies”), a person who, in a case of a class to which the order applies —

- (a) pay to the operator of the scheme any charges payable under the scheme in respect of a licence applying to the case concerned or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and
- (b) complies with the other terms applicable to the licence under the scheme,

is in the same position as regards infringement of the database right as if he or she had at all material times been the holder of a licence granted by the owner of the database right concerned in accordance with the scheme.

(3) The Controller may direct that an order to which this section applies, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference was made, or where later, the date on which the scheme came into operation.

(4) Where a direction is made under subsection (3) —

- (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.

(5) Where the Controller has made an order under section 345 and the order remains in force, the person in whose favour the order is made, where he or she —

- (a) pays to the operator of the scheme any charges payable in accordance with the order, or where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and
- (b) complies with the other terms specified in the order,

is in the same position as regards infringement of the database right as if he or she had at all material times been the holder of a licence granted by the owner of the database right concerned on the terms specified in the order.

REFERENCES AND APPLICATIONS RELATING TO LICENSING BY LICENSING BODIES

General reference by licensing bodies

348. Sections 349 to 352 apply to licences in relation to the database right in databases of more than one database right owner, granted by a licensing body other than pursuant to a licensing scheme, in so far as the licences relate to the extraction or re-utilisation of all or a substantial part of the contents of a database.

Reference to Controller of proposed licence

349.—(1) The terms on which a licensing body proposes to grant a licence may be referred to the Controller by the prospective licensee for an order under subsection (3).

(2) The Controller may refuse to consider a reference under subsection (1) on the ground that the reference is premature.

(3) Where the Controller decides to consider a reference under subsection (1), he or she shall consider the terms of the proposed licence and make an order, confirming or varying the terms, as the Controller may determine to be reasonable in the circumstances.

(4) An order under subsection (3) may be made for such period as the Controller may determine.

Reference to Controller of expiring licence

350.—(1) A licensee under a licence which is due to expire, with the passage of time or as a result of notice given by the licensing body, may apply to the Controller on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) An application under subsection (1) may be made at any time during the last 3 months before the expiration of the licence.

(3) A licence in respect of which a reference has been made to the Controller under subsection (1) shall remain in force until proceedings in relation to the reference are concluded.

(4) Where the Controller is satisfied that an application made under subsection (1) is well-founded, he or she shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Controller may determine to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

*Application for review
of order made by Controller*

351.—(1) Where the Controller has made an order under section 349 or 350, the licensing body or the person entitled to the benefit of the order may apply to the Controller for a review of that order.

(2) An application under subsection (1) shall not be made except with the special leave of the Controller —

- (a) within 12 months from the date of the order or of the decision on a previous application under this section, or
- (b) where—
 - (i) the order was made so as to be in force for 15 months or less, or
 - (ii) as a result of the decision on a previous application under this section the order is due to expire within 15 months of that decision, until the last 3 months before the expiration date.

(3) The Controller shall, on an application for review, confirm or vary his or her order as the Controller may determine to be reasonable in the circumstances.

Effect of order of Controller as to licence

352.—(1) Where the Controller has made an order under section 349 or 350, and the order remains in force, the person entitled to the benefit of the order, where he or she —

- (a) pays to the licensing body any charges payable in accordance with the order or, where the amount cannot be ascertained, gives an undertaking to the Controller to pay the charges when ascertained, and
- (b) complies with the other terms specified in the order,

is in the same position as regards infringement of the database right as if he or she had at all material times been the holder of a licence granted by the owner of the database right concerned on the terms specified in the order.

(2) The benefit of an order made under section 349 or 350 may be assigned —

- (a) in the case of an order made under section 349, where assignment is not prohibited under the terms of the order of the Controller, and
- (b) in the case of an order made under section 350, where assignment was not prohibited under the terms of the original licence.

(3) The Controller may direct that an order made under section 349 or 350 or an order made under section 351 varying such an order, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference or application was made or, where later, the date on which the licence was granted or, as the case may be, was due to expire.

(4) Where a direction is given under subsection (3) —

- (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 further order, as a reference to the charges so payable by virtue of that further order.

LICENSING: MISCELLANEOUS

General considerations: unreasonable discrimination

353.—(1) In determining what is reasonable, on a reference or application under this Chapter relating to a licensing scheme or licence, the Controller 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 his or her powers so as to ensure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

(2) Subsection (1) shall not affect the obligation of the Controller in any case to have regard to all relevant circumstances.

Licences to reflect payments in respect of underlying rights

354. Where a reference or application is made under this Chapter in relation to licensing in respect of the database right in a database, the Controller shall take into account, in

considering what charges are to be paid for a licence, any payments which the owner of the database right is liable to make pursuant to the granting of the licence, or pursuant to the acts authorised by the licence—

- (a) to owners of the copyright in works included in the database, or
- (b) in respect of any performance included in the database.

Chapter 12

Registration of Licensing Bodies in Respect of Database Right

Register of licensing bodies for database right

355.—(1) The Controller shall establish and maintain a register of licensing bodies in respect of database rights in such form and manner and containing such particulars as the Minister may prescribe to be known as the “Register of Licensing Bodies for Database Rights” and referred to in this Part as the “Register”.

(2) The Controller shall keep the Register in such form that the Register is capable of being used to make a copy of any entry in the Register.

(3) The Register shall be kept at such place as may be prescribed by the Minister and, subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance —

- (a) the Register shall be made available for inspection by a person at such times and in such manner as may be prescribed by the Minister, and
- (b) where a request is made to the Controller for a certified or uncertified copy of, or extract from, an entry in the Register, the Controller shall issue a copy of the entry or extract to the applicant.

(4) An application for registration or renewal of a registration of a licensing body shall be made to the Controller in such form and manner as may be prescribed by the Minister and shall be subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance.

(5) The Controller shall register an applicant or renew a registration where the Controller is satisfied that —

- (a) the applicant complies with the definition of a licensing body specified in section 340, and
- (b) the applicant has provided such information and satisfied such conditions as may be prescribed by the Minister for the purposes of registration.

(6) The information to be prescribed by the Minister under subsection (5) (b) shall include the following:

- (a) the name of the applicant;
- (b) the address of the applicant;
- (c) the names of the chairperson and other members of the board or officers, or names of partners, as the case may be, of the applicant;
- (d) a copy of the memorandum and articles of association or partnership agreement, of the applicant;
- (e) details of the scheme;
- (f) details of the scales of charges or proposed charges to be levied by the applicant; and
- (g) the class of rights owners represented or proposed to be represented by the applicant.

(7) On the registration or renewal of a registration of a licensing body the Controller shall issue to the applicant a certificate of registration in such form as the Controller shall determine.

*Proof that licensing body may act
on behalf of specified classes*

356. A certificate granted under section 355(7) shall include the particulars specified in subsection (6) of that section and the certificate shall be evidence of the right of the licensing body, until the contrary is proved, to act on behalf of the classes of rights owners for whom it claims representation rights or on behalf of the rights owners who have assigned rights to it, or exclusively licensed it, as specified in that certificate.

Notification of charges

357.—(1) A licensing body registered under this Part which proposes to impose a charge, otherwise than in accordance with the scales of charges included in an application for registration or for renewal of a registration, shall provide the Controller in writing with details of the proposed charge not less than one month before the charge comes into effect.

(2) The registration of a licensing body which fails to comply with subsection (1) is deemed to be cancelled from the date on which the proposed charge comes into effect.

Validity of certificates of registration

358.—(1) A certificate of registration issued under section 355(7) shall be valid for a period of 12 months from the date of registration or such lesser period as may be specified by the Controller in the certificate.

(2) Subject to section 355(4), a licensing body registered under this Part may apply for renewal of its registration for further periods each of which shall not exceed 12 months.

(3) An application for renewal of a registration shall be made not less than one month before the expiration of the period of validity of the certificate of registration.

(4) A term of renewal of a registration shall take effect from the expiration of the previous registration.

Refusal of application

359.—(1) The Controller may refuse an application for renewal of a registration by a licensing body registered under this Part or cancel the registration of a licensing body where the body no longer fulfils the requirements specified in section 355(5).

(2) The Controller shall remove a licensing body from the Register where its application for renewal of its registration is refused or its registration is cancelled.

Indemnity for Controller

360. No action or other proceedings shall lie or be maintainable against the Controller (except in the case of wilful neglect of duty) in respect of anything done or omitted to be done by him or her in the *bona fide* exercise of any functions, powers or duties conferred or imposed by or under this Chapter.

*Obligation of collecting societies to register
(database rights)*

361.—(1) Any body operating as a licensing body within the meanings specified in section 340 shall be obliged to register in accordance with the provisions of this Chapter, and to remain registered for so long as it continues to operate in this capacity.

(2) Any body to which the provisions of subsection (1) applies which —

- (a) fails within 6 months of the commencement of this Chapter to register under the terms of this Chapter,
- (b) fails within 2 months of its establishment in the case of a body established after the commencement of this Chapter to register under the terms of this Chapter, or
- (c) continues to operate as such a body having been removed from the Register for any reason,

shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) shall be liable —

- (a) on summary conviction, to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

PART VI
JURISDICTION OF CONTROLLER

Jurisdiction of Controller

362. It shall be a function of the Controller pursuant to references or applications under this Act to determine, within a reasonable period of time, disputes arising under this Act between licensing bodies and persons requiring licences or organisations claiming to be representative of those persons.

*Rules in relation to proceedings
before Controller*

363.—(1) The Minister may make rules in relation to proceedings before the Controller under this Act and, subject to the consent of the Minister for Finance, may also make rules in relation to the fees chargeable in respect of such proceedings.

(2) Rules made under this section shall —

- (a) specify the parties to proceedings and permit the Controller to make a party to the proceedings a person or organisation satisfying the Controller that the party concerned has a substantial interest in the matter, and
- (b) require the Controller to give the parties to proceedings an opportunity to state their case orally or in writing.

(3) Without prejudice to the generality of subsection (1), rules made under this section may make provision for prescribing matters incidental to or consequential upon appeals from decisions of the Controller under section 366.

Power of Controller to award costs

364.—(1) The Controller may order that the costs of a party to proceedings before him or her under this Act, including costs associated with the appointment of an arbitrator under section 367 and costs of a party to proceedings before that arbitrator, shall be paid by such party as the Controller may direct, and the Controller may determine the amounts of the costs or direct the manner in which they are to be paid.

(2) A copy of an order made by the Controller under subsection (1) which is certified by the Controller to be a true copy shall, in proceedings under this Act, be evidence of the order unless the contrary is proved.

Appointment of assessors

365.—(1) In any proceedings before him or her under this Act, the Controller may, where he or she thinks fit, and shall, on the request of all the parties to the proceedings, appoint an assessor who is specially qualified in regard to all or any of the questions arising in

the course of the proceedings to aid the Controller in his or her consideration of those questions.

(2) Subject to subsection (3), the Minister shall approve, with the consent of the Minister for Finance, the amount of remuneration (if any) to be paid by the Controller to an assessor appointed by him or her under this section.

(3) The amount of remuneration referred to under subsection (2) shall be paid out of moneys provided by the Oireachtas, to such an extent as may be sanctioned by the Minister for Finance.

Appeal to the High Court

366.—(1) An appeal on a point of law arising from a decision of the Controller under this Act shall lie to the High Court.

(2) Provisions shall be made in the rules made under section 363 limiting the time within which such an appeal may be brought.

(3) Provisions may be made in the rules made under section 363 for all or any of the following, namely:

- (a) suspending, authorising or requiring the Controller to suspend the operation of orders of the Controller in cases where his or her decision is appealed;
- (b) modifying, in relation to an order of the Controller the operation of which is suspended, the operation of any provision of this Act to the effect of that order;
- (c) the notification of, or the taking of other steps for securing that, persons affected by the suspension of an order of the Controller shall be informed of its suspension.

(4) Subject to subsection (5), a decision of the High Court under this section shall be final and may not be appealed.

(5) By leave of the High Court, an appeal from a decision of the High Court under this section shall lie to the Supreme Court on a question of law.

References of dispute to arbitrator

367.—(1) In the case of a dispute referred to the Controller under this Act, the Controller may at any time —

- (a) where the parties to the dispute consent, or
- (b) where a matter requires any prolonged examination of documents or other investigation requiring specialist knowledge which could not be made by him or her,

order the matter to be referred to an arbitrator agreed by the parties or, in the absence of such agreement, appointed by the Controller.

(2) The Controller shall decide whether or not to refer a dispute to arbitration no later than 3 months after the dispute has been referred to the Controller.

(3) The arbitrator shall make his or her award within 3 months of the reference from the Controller, or within such further period of time as may be agreed with the Controller.

(4) The award made by an arbitrator in a case referred to him or her under this section shall, where the parties consent to the reference, be final and binding on the parties.

(5) An appeal from an award made by an arbitrator pursuant to a reference under this section to which the parties to the dispute did not consent shall lie to the High Court and the High Court may make such order confirming, annulling or varying the award of the arbitrator as it thinks fit.

(6) Subject to subsection (7), a decision of the High Court under this section shall be final and may not be appealed.

(7) By leave of the High Court, an appeal from a decision of the High Court under this section shall lie to the Supreme Court on a question of law.

(8) In any reference to an arbitrator under this section, the Controller on giving notice to the parties to the dispute shall have the same power to apply to the court for the removal of that arbitrator under section 24 of the Arbitration Act, 1954, as if he or she had been a party to the arbitration.

(9) Nothing in subsection (8) shall affect the rights of the parties to the arbitration.

(10) For the avoidance of doubt, in the event of an arbitrator being removed under subsection (8), a second or subsequent arbitrator may be appointed to arbitrate the dispute in accordance with this section.

Controller may consult Attorney General

368. The Controller may, in any case of doubt or difficulty arising in connection with the administration of any of the provisions of this Act, apply to the Attorney General for advice in the matter.

*Definition of dispute
for the purposes of this chapter*

369. For the purposes of this Chapter, “dispute” shall include any matter referred to the Controller for decision or resolution by reference or application under any provision of this Act.

PART VII
TECHNOLOGICAL PROTECTION MEASURES

Chapter 1
Rights Protection Measures

Devices designed to circumvent protection

370.—(1) This section applies where, by or with the licence of the rights owner —

- (a) copies of copyright works to which rights protection measures have been applied or recordings of performances to which rights protection measures have been applied, are made available to the public, or
- (b) copies of databases to which rights protection measures have been applied, are re-utilised.

(2) A person who makes available to the public or re-utilises the copies referred to in subsection (1) has the same rights and remedies against a person who —

- (a) (i) makes,
 - (ii) sells, rents or lends, or offers or exposes for sale, rental or loan,
 - (iii) imports into the State, or
 - (iv) has in his or her possession, custody or control, a protection-defeating device, knowing or having reason to believe that it has been or is to be used to circumvent rights protection measures, or
- (b) provides information, or offers or performs any service, intended to enable or assist persons to circumvent rights protection measures,

as a rights owner has in respect of an infringement of any of his or her rights under this Act.

(3) The presumptions as to ownership of rights specified in Chapter 12 of Part II and Chapter 10 of Part V shall apply in any proceedings under this section, whether civil or criminal, as in proceedings for infringement of the copyright in a work or for infringement of the database right in a database under Part II or Part V.

(4) Sections 145 and 264 shall apply with any necessary modifications in relation to the disposal of anything delivered up or seized by virtue of subsection (2).

(5) References in this Part to copies of a work, recording or database shall include the original.

Offence of unlawful reception

371. A person who receives a broadcast or cable program to which rights protection measures have been applied, knowing or having reason to believe that it is being received unlawfully with the intent to avoid payment of any charge applied by the rights owner for the

reception of that broadcast or cable programmes shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.

*Rights in respect of apparatus, etc.,
for an authorised reception of transmissions*

372.—(1) A person who is authorised by the rights owner —

- (a) to make charges for the reception of programmes included in a broadcast or cable programmes service, or
- (b) to send encrypted transmissions of any other description,

has the same rights and remedies against a person who

- (i) (I) makes,
 - (II) sells, rents or lends, or offers or exposes for sale, rental or loan,
 - (III) imports into the State, or
 - (IV) has in his or her possession, custody or control,
 any apparatus or protection-defeating device, knowing or having reason to believe that the apparatus or device is to be used to enable or assist persons to receive those programmes or transmissions when those persons are not so entitled, or
- (ii) provides information, or offers or performs any service, intended to enable or assist persons to receive those programmes or transmissions when those persons are not so entitled,

as a rights owner has in respect of an infringement of any of his or her rights under this Act.

(2) Without prejudice to any other remedy, in cases of innocent infringement of the rights conferred by subsection (1), the appropriate court may award damages as it considers appropriate in the circumstances, and such damages shall not exceed a reasonable payment in respect of the act complained of.

(3) Sections 145 and 264 shall apply with any necessary modifications in relation to the disposal of anything delivered up or seized by virtue of subsection (1).

Denial of protection

373.—(1) Where it appears to the Minister that broadcasts made, or cable programmes or encrypted transmissions sent, from the State are not adequately protected in a country, territory, state or area, the Minister may by order restrict the rights conferred by section 370, 371 or 372 in relation to broadcasters or providers of cable programme services or encrypted transmissions connected with that country, territory, state or area.

(2) In an order made under subsection (1) the Minister shall designate the country, territory, state or area concerned and provide that, for the purposes specified in that order, a broadcast made or a cable programme or encrypted transmission sent after a date specified in

that orders shall not qualify for the protection conferred by section 370, 371 or 372 where at the time of that making or sending the maker or sender is —

- (a) an individual domiciled or resident in that country, territory, state or area (and not at the same time domiciled or resident in the State),
- (b) a body incorporated under the law of that country, territory, state or area,
- (c) a partnership or unincorporated body formed under the law of that country, territory, state or area, or
- (d) any other body,

and the order may make such provision for all the purposes of section 370, 371 or 372 or for such purposes as are specified in that order.

*Non-interference of rights protection measures
with permitted acts*

374. Nothing in this Chapter shall be construed as operating to prevent any person from undertaking the acts permitted —

- (a) in relation to works protected by copyright under Chapter 6 of Part II,
- (b) in relation to performances, by Chapter 4 of Part III, or
- (c) in relation to databases, by Chapter 8 of Part V,

or from undertaking any act of circumvention required to effect such permitted acts.

**Chapter 2
Rights Management Information**

*Rights and remedies
in respect of unlawful acts which interfere
with rights management information*

375.—(1) A person who provides rights management information has the same rights and remedies against a person who —

- (a) removes or alters rights management information from copies of copyright works, copies of recordings of performances or copies of databases knowing or having reason to believe that the primary purpose or effect of such removal or alteration is to induce, enable, facilitate or conceal an infringement of any right conferred by this Act,
- (b) makes available to the public copies of copyright works or copies of recordings of performances or re-utilises copies of databases, referred to in paragraph (a), knowing or having reason to believe that rights management information has been removed or altered from those copies, or
- (c) (i) sells, rents or lends, or offers or exposes for sale, rental or loan,
(ii) imports into the State, or

- (iii) in the course of a business, trade or profession, has in his or her possession, custody or control, copies of copyright works, copies of recordings of performances or copies of databases referred to in paragraph (a), knowing or having reason to believe that rights management information has been removed or altered from those copies,

as a rights owner has in respect of an infringement of any of his or her rights under this Act.

(2) References in this section to rights management information include information, or any representation thereof —

- (a) which identifies a copyright work, recording of a performance or database,
- (b) which identifies the author in relation to a copyright work the performer in relation to a recording of a performance or the maker in respect of a database,
- (c) which identifies the owner of any right in a copyright work, recording of a performance or database, or
- (d) about the terms and conditions of use of a copyright work, recording of a performance or database,

where any of these items of information, or any representations thereof, are attached to or appear in connection with a copy of a copyright work or a copy of a recording of a performance, which is lawfully made available to the public, or a copy of a database which is lawfully re-utilised.

(3) Sections 145 and 264 shall apply with any necessary modifications in relation to the disposal of anything delivered up or seized by virtue of subsection (1).

*Removal or interference
with rights management information*

376.—(1) A person who —

- (a) removes or alters rights management information from copies of copyright works, copies of recordings of performances or copies of databases knowing or having reason to believe that the primary purpose or effect of such removal or alteration is to induce, enable, facilitate or conceal a infringement of any right conferred by this Act,
- (b) makes available to the public copies of copyright works or copies of recordings of performances or re-utilises copies of databases, referred to in paragraph (a), knowing or having reason to believe that rights management information has been removed or altered from those copies, or
- (c) (i) sells, rents or lends, or offers or exposes for sale, rental or loan,
(ii) imports into the State, or
(iii) in the course of a business, trade or profession, has in his or her possession, custody or control, copies of copyright works, copies of recordings of performances or copies of databases, referred to in paragraph (a), knowing or having reason to believe that rights management information has been removed or altered from those copies,

shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable —

- (a) on summary conviction to a fine not exceeding £1,500 in respect of each copy, or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment to a fine not exceeding £100,000, or imprisonment for a term not exceeding 5 years, or both.

FIRST SCHEDULE

Part I **Transitional Provisions and Savings:** **Copyright**

1. (1) In this Schedule —

“Act of 1911” means the Copyright Act, 1911;

“Act of 1927” means the Industrial and Commercial Property (Protection) Act, 1927;

“Act of 1963” means the Copyright Act, 1963;

“new copyright provisions” means the provisions of this Act relating to copyright;

“new right” means a right arising by virtue of this Act other than —

- (a) a right corresponding to a right which existed immediately before the commencement of Part III of this Act, or
- (b) a right to remuneration arising under this Act.

(2) References in this Schedule to “commencement” shall be construed as references to the date on which the provision concerned came into operation.

(3) References in this Schedule to “existing work” shall be construed as references to a work made before the commencement of Part II of this Act and for this purpose a work the making of which extends over a period of time shall be deemed to have been made when the work is completed.

(4) In relation to the Act of 1963, references in this Schedule to a work include any work within the meaning of that Act.

(5) In relation to the Act of 1927 —

- (a) a reference in Part I of this Schedule to copyright includes the right conferred by that Act in substitution for a right subsisting immediately before the commencement of that Act;
- (b) a reference in Part I of this Schedule to copyright in a sound recording is a reference to the copyright under that Act in a record embodying the recording; and

- (c) a reference in Part I of this Schedule to copyright in a film is a reference to any copyright under that Act in the film (in so far as the film constituted a dramatic work for the purposes of that Act) or in photographs forming part of that film.

2. Subject to any express provisions to the contrary, the new copyright provisions shall apply in relation to works existing on the commencement of Part II of this Act as they apply in relation to works coming into existence after such commencement.

3.—(1) A reference in an enactment or other document to copyright, or to a work in which copyright subsists, which apart from this Act would be construed as referring to copyright under the Act of 1963 shall be construed, in 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.

(2) Subject to any express provision to the contrary, anything done, or having effect as being 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.

(3) References (expressed or implied) in this Act or any other enactment or other document to any of the new copyright provisions shall, in so far as the context permits, be construed as including, in relation to times, circumstances and purposes before commencement of Part I or II of this Act, a reference to corresponding provisions in operation at the time of the commencement of Part I or II of this Act.

(4) Subject to any express provision to the contrary, a reference (express or implied) in an enactment or other document to a provision repealed by this Act shall be construed, in so far as may be required for continuing its effect, as a reference to the corresponding provision of this Act in so far as there are corresponding provisions.

(5) Notwithstanding the repeal of the Act of 1963, any regulation, rule or order made under the Act of 1963 and which is in force immediately before the commencement of Part II of this Act shall continue in force and be deemed after the commencement of the said Part II to be made under the corresponding provisions of this Act.

(6) Notwithstanding the repeal of the Act of 1963, any proceedings initiated or criminal prosecutions instituted under that Act may continue and shall be determined as if the Act of 1963 had not been repealed and any order made or fine or penalty imposed shall have effect accordingly.

(7) Except as otherwise expressly provided, any agreement made prior to the coming into operation of that Part of this Act which relates to the subject matter of the agreement shall be construed by reference to the law existing at the time the agreement was made and it shall not be construed as conferring any rights on any party which were not then in existence except in cases where the parties had expressly agreed that its terms would apply to new rights arising from future legislation.

4. Copyright subsists in an existing work after the commencement of Part II of this Act where copyright subsisted in the work concerned immediately before such commencement.

5.—(1) Copyright shall not subsist in a film, as such, made before the first day of October, 1964.

(2) Where a film made before the date referred to in subparagraph (1) was an original dramatic work for the purposes of the Act of 1927, the new copyright provisions shall have effect in relation to the film as if it was an original dramatic work within the meaning of Part II of this Act.

(3) The new copyright provisions apply in relation to photographs forming part of a film made before the first day of October, 1964, as they apply in relation to photographs not forming part of a film.

6.—(1) A film sound-track to which section 18(8) of the Act of 1963 applied before the commencement of Part II of this Act shall be deemed for the purposes of the new copyright provisions to be a sound recording.

(2) Copyright subsists in a sound recording where copyright subsisted in the film immediately before the commencement of Part II of this Act and it continues to subsist until copyright in the film expires.

(3) The author and first owner of copyright in the film shall be deemed to be the author and first owner of the copyright in the sound recording.

(4) Anything done before the commencement of Part II of this Act under or in relation to the copyright in the film continues to apply in relation to the sound recording as in relation to the film.

7. The question as to 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 7 of Part II of this Act, and for all other purposes shall be determined in accordance with the law applicable at the time the work was made.

8.—(1) The question as to who is or was the first owner of copyright in an existing work shall be determined in accordance with the law applicable to copyright at the time the work was made.

(2) Where, before the commencement of Part II of this Act, a person commissioned the making of a work in circumstances within — he

(a) section 10(3) of the Act of 1963 or paragraph (a) of the proviso to section 158(1) of the Act of 1927, or

(b) the proviso to section 17(3) of the Act of 1963,

those provisions shall apply in order to determine first ownership of copyright in any work made pursuant to the commission after the commencement of the said Part II.

9.—(1) Nothing in this Act shall affect the duration of copyright in works in which copyright subsists on or before the commencement of Part II of this Act, and the duration of copyright in those works shall be determined, where applicable, in accordance with the European Communities (Term of Protection of Copyright) Regulations, 1995 (S.I. No. 158 of 1995), notwithstanding the revocation of those Regulations.

(2) This Act shall apply to computer programs whether created before or after the first day of January, 1993.

10. Section 13 of the Act of 1963 continues to apply where notice under 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 of the Act of 1963 coming into operation, and
- (b) up to the number stated in the notice as intended to be sold.

11.—(1) Any act undertaken before the commencement of Chapter 7 of Part II of this Act shall not be actionable under any provision of that Chapter.

(2) Section 54 of the Act of 1963 continues to apply in relation to acts undertaken before the commencement of Chapter 7 of Part II of this Act.

12.—(1) The rights conferred by sections 107 and 109 shall not apply —

- (a) in relation to a literary, dramatic, musical or artistic work the author of which died before the commencement of Part II of this Act, or
- (b) in relation to a film, broadcast or typographical arrangement made before the commencement of Part II of this Act.

(2) The rights conferred by sections 107 and 109 in relation to an existing literary, dramatic, musical or artistic work shall not apply —

- (a) where copyright first vested in the author, to anything which by virtue of an assignment of copyright made or licence granted before the commencement of Part II of this Act 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.

(3) Chapter 7 of Part II of this Act shall not apply to anything done in relation to a record made pursuant to section 13 of the Act of 1963.

13. The right conferred by section 114 shall not apply to photographs taken or films made before the commencement of Part II of this Act.

14.—(1) Any document made or event occurring before the commencement of Part II of this Act which operated —

- (a) to affect the ownership of the copyright in an existing work, or
- (b) to create, transfer or terminate an interest, right or licence in respect of the copyright in an existing work,

has the corresponding operation in relation to copyright in the existing work under this Act.

(2) A word or phrase in a document referred to in subparagraph (1) shall be construed in accordance with its effect immediately before the commencement of Part II of this Act.

15. Section 121 shall not apply in relation to an agreement made before the first day of October, 1964, in relation to copyright.

16.—(1) Where the author of a literary, dramatic, musical or artistic work was the first owner of the copyright in the work, an assignment of the copyright and a grant of any interest in it, made by him or her (otherwise than by will) after the passing of the Act of 1927 and before the first day of October, 1964, shall not operate to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years after the death of the author.

(2) The reversionary interest in the copyright expectant on the expiration of the period referred to in subparagraph (1) may, after the commencement of Part II of this Act, be assigned by the author during his or her life but in the absence of any assignment shall, on his or her death, devolve on his or her legal personal representatives as part of his or her 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 or her personal representatives or any person becoming entitled to it, or
- (c) any assignment of the copyright after the reversionary interest has fallen in.

(4) This paragraph shall not apply 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 subparagraph (4) “collective work” means —

- (a) any encyclopaedia, dictionary, yearbook, or similar work,
- (b) a newspaper or periodical, or
- (c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

Part II
Works Made Before
the First Day of July, 1912

17.—(1) Paragraphs 17 to 30 and 44 of this Schedule apply to works made before the first day of July, 1912.

(2) In paragraphs 17 to 30 and 44 of this Schedule a “right conferred by the Act of 1911”, in relation to a work, means such a substituted right as, by virtue of section 24 of the Act of 1911, was conferred in place of a right subsisting immediately before the commencement of that Act.

18. Notwithstanding anything in paragraphs 17 to 30 and 44 of this Schedule, neither subsection (1) or (2) of section 8 of the Act of 1963, nor subsection (2) or (3) of section 9 of that Act, shall apply to a work to which this Part of the Schedule applies, unless a right conferred by the Act of 1911 subsisted in the work immediately before the commencement of the said section 8 or 9, as the case may be.

19.—(1) Where, in the case of a dramatic or musical work made before the first day of July, 1912, the right conferred by the Act of 1911 did not include the sole right to perform the work in public, then, in so far as copyright subsists in the work by virtue of this Act, the acts restricted by the copyright shall be treated as not including those specified in subparagraph (3).

(2) Where, in the case of a dramatic or musical work to which paragraphs 17 to 30 and 44 of this Schedule apply, the right conferred by the Act of 1911 consisted only of the sole right to perform the work in public, then, in so far as copyright subsists in the work by virtue of this Act, the acts restricted by the copyright shall be treated as consisting only of those specified in subparagraph (3). e

(3) The acts referred to in subparagraphs (1) and (2) are —

- (a) performing the work or an adaptation thereof in public,
- (b) broadcasting the work or an adaptation thereof, or
- (c) causing the work or an adaptation thereof to be transmitted to subscribers to a diffusion service.

20. Where a work to which paragraphs 17 to 30 and 44 apply consists of an essay, article or extract forming part of a work and first published in a review, or other periodical or similar work, and immediately before the commencement of section 8 of the Act of 1963, a right of publishing the work in a separate form subsisted by virtue of the note appended to the First Schedule to the Act of 1911, that note shall have effect, in relation to that work as if it had been re-enacted in this Act with the substitution, where it first occurs for “right” of “copyright”.

21.—(1) This paragraph shall apply where —

- (a) the author of a work to which paragraphs 17 to 30 and 44 of this Schedule apply had, before the commencement of the Act of 1911, made such an assignment or grant as is mentioned in paragraph (a) of the proviso to subsection (1) of section 24 of that Act, and
- (b) copyright subsists in the work by virtue of any provision of this Act.

(2) Where, before the commencement of section 24 of the Act of 1911, an event occurred, or notice was given, which in accordance with paragraph (a) of the proviso referred to in subparagraph (1) (a) operated so as to affect the ownership of the right conferred by the Act of 1911 in relation to the work, or creating, transferring or terminating an interest, right or licence in respect of that right, that event or notice shall have the corresponding operation in relation to the copyright in the work under this Act.

(3) Any right which, at a time after the commencement of a provision of this Act by virtue of which copyright subsists in a work, which would, but for the passing of this Act, by virtue of paragraph (a) of the proviso referred to in subparagraph (1) (a), have been exercisable in relation to the work, or to the right conferred by the Act of 1911, shall be exercisable in relation to the work or to the copyright in that work under this Act, as the case may be.

(4) If, in accordance with paragraph (a) of the proviso referred to in subparagraph (1) (a), the right conferred by the Act of 1911 would have reverted to the author or his or her personal representatives on the date referred to in that paragraph, and the said date is after the commencement of section 17 —

- (a) the copyright in the work under this Act shall revert to the author or his or her personal representatives, as the case may be, and
- (b) any interest of any other person in that copyright which subsists on that date by virtue of any document made before the commencement of the Act of 1911 shall thereupon determine.

22.—(1) Section 123 —

- (a) shall not apply where the testator died before the first day of October, 1964, and
- (b) applies only in relation to an original document embodying a work, where the testator died on or after that date and before the commencement of Part II of this Act.

(2) In the case of an author who died before the first day of October, 1964, the ownership after his or her death of his or her manuscript, where such ownership has been acquired under a testamentary disposition made by him or her 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.

23.—(1) Sections 127 and 128 shall apply only in relation to an infringement of copyright committed after the commencement of Part II of this Act; section 22 of the Act of 1963 shall continue to apply in relation to infringements committed before such commencement.

(2) Sections 131 to 133 shall apply to infringing copies, articles and devices made before or after the commencement of Part II of this Act; section 24 of the Act of 1963 shall not apply after such commencement except for the purposes of proceedings initiated before such commencement.

(3) Sections 135 and 136 shall apply only in relation to an infringement of copyright committed after the commencement of Part II of this Act; section 25 of the Act of 1963 shall continue to apply in relation to infringements committed before such commencement.

(4) Section 139 shall apply only in proceedings brought by virtue of this Act; section 26 of the Act of 1963 shall continue to apply in proceedings brought by virtue of that Act.

24. Sections 135 and 136 shall not apply to a licence granted before the first day of October, 1964.

25.—(1) Section 140 shall apply only in relation to acts undertaken after the commencement of Part II of this Act; section 27 of the Act of 1963 shall continue to apply in relation to acts undertaken before such commencement.

(2) Section 143 shall apply in relation to offences committed before the commencement of Part II of this Act in relation to which the Act of 1963 applied; section 27(5) of the Act of 1963 shall continue to apply in relation to warrants issued before such commencement.

26. A dispute referred to the Controller under Part V of the Act of 1963 and pending at the time of the commencement of Part II of this Act shall be disposed of under the said Part V of the Act of 1963 as if that Part had not been repealed.

27. Every work in which copyright subsisted under the Act of 1963 immediately before the commencement of Part II of this Act shall be deemed to satisfy the requirements of this Act as to qualification for copyright protection.

28.—(1) Section 191 shall apply to an existing work where —

- (a) section 51 of the Act of 1963 applied to the work immediately before commencement, and
- (b) the work is not one to which section 193, 194 or 195 applies.

(2) Section 191(2) shall have effect subject to any agreement entered into under section 51(6) of the Act of 1963 where that agreement is entered into before the commencement of Part II of this Act.

29.—(1) Section 193 of this Act shall apply to existing unpublished literary, dramatic, musical or artistic works, but shall not otherwise apply to existing works.

(2) Section 194 shall not apply to any Bill introduced into either House of the Oireachtas before the commencement of Part II of this Act.

30.—(1) Any work in which, immediately before the commencement of Part II of this Act, copyright subsisted by virtue of section 44 of the Act of 1963 shall be deemed to satisfy the requirements of section 196(1); but otherwise section 196(1) shall not apply to works made or, as the case may be, published before such commencement.

(2) Copyright in a work referred to in subparagraph (1) which is unpublished continues to subsist until the date on which it would have expired in accordance with the Act of 1963, or the expiration of the period of 50 years from the end of the calendar year in which the new copyright provisions are commenced, whichever is the earlier.

Part III Secondary Infringements

31.—(1) Sections 44 to 48 shall apply to secondary infringements occurring on or after the commencement of those sections.

(2) Notwithstanding the repeal of section 11 of the Act of 1963, that section shall continue to apply in respect of infringements occurring before the commencement of sections 44 to 48.

Part IV Performers' Rights

32. In this Part —

“existing” in relation to a performance, means a performance given before the commencement of this Part of the Schedule.

33. Notwithstanding the repeal of the Performers' Protection Act, 1968, any proceedings initiated or criminal prosecutions instituted under that Act may continue and shall be determined as if that Act had not been repealed and any order made or fine or penalty imposed shall have effect accordingly.

34. For the purposes of this Part of this Schedule a performance, the making of which extended over a period of time, shall be taken to have been made when the performance was completed.

35. An act undertaken before the commencement of Part III or Part IV of this Act shall not be regarded as an infringement of any new right, or as giving rise to any right to remuneration arising by virtue of Part III or Part IV of this Act.

36.—(1) Any new right conferred by Part III or Part IV of this Act in relation to a qualifying performance is exercisable after the commencement of the said Part III and Part IV by the performer or, where he or she has died, by the person who under section 300 would be

entitled to exercise the rights conferred on the performer by the said Part III or Part IV in relation to that performance.

(2) Any remuneration or damages received by a person's personal representatives under a right conferred on them by subparagraph (1) shall devolve as part of that person's estate as if the right had subsisted and been vested in him or her immediately before his or her death.

Part V Copyright and Performers' Rights

37.—(1) Except as otherwise expressly provided, nothing in this Act affects an agreement in relation to rental and lending rights established by virtue of the Council Directive No. 92/100/EEC of 19 November, 1992, on rental right and lending right and certain rights relating to copyright in the field of intellectual property made before the 19th day of November, 1992.

(2) An act undertaken pursuant to an agreement referred to in subparagraph (1) after the commencement of Part III or Part IV of this Act shall not be regarded as an infringement of any new right.

38.—(1) This Act applies to an agreement concluded before the first day of January, 1995—

- (a) between two or more co-producers of a film, one of whom is a national of a Member State of the EEA, and
- (b) the provisions of the agreement grant to the parties exclusive rights to exploit all communication to the public of the film in separate geographical areas.

(2) When an international co-production agreement concluded before the first day of January, 1995, between a co-producer from a Member State of the EEA and one or more co-producers from other Member States of the EEA or third countries expressly provides for a system of division of exploitation rights between the co-producers by geographical areas for all means of communication to the public, without distinguishing the arrangement applicable to communication to the public by satellite from the provisions applicable to the other means of communication, and where communication to the public by satellite of the co-production would prejudice the exclusivity, in particular the language exclusivity, of one of the co-producers or his or her assignees in a given territory, the authorisation by one of the co-producers or his or her assignees for a communication to the public by satellite shall require the prior consent of the holder of that exclusivity, whether co-producer or assignee.

39. Where before the commencement of Part II, Part III or Part IV of this Act —

- (a) the owner or prospective owner of copyright in a literary, dramatic, musical or artistic work has authorised a person to make a copy of the work, or
- (b) the owner or prospective owner of performers' rights in a performance has authorised a person to make a copy of a recording of the performance,

any new right in relation to that copy shall vest on such commencement in the person so authorised, subject to any agreement to the contrary.

40.—(1) Subject to paragraph 41, sections 124 and 297 shall apply and have effect in relation to an agreement concluded before or after the commencement of Part II and Part III of this Act.

(2) Subject to paragraph 41, sections 125 and 298 shall apply and have effect accordingly.

41. No right to equitable remuneration under sections 125 and 298 arises —

- (a) in respect of any rental of a sound recording or film before the first day of July, 1997, or
- (b) in respect of any rental after that date of a sound recording or film made in pursuance of an agreement entered into before the first day of July, 1994, unless the author or performer (or his or her successor in title) has, before the first day of January, 1997, notified the person by whom the remuneration would be payable that he or she intends to exercise that right.

42.—(1) Any new right in relation to a copyright work shall not apply to a copy of the work acquired by a person before the commencement of Part II of this Act for the purpose of renting or lending it to the public.

(2) Any new right in relation to a qualifying performance shall not apply to a copy of a recording of the performance acquired by a person before the commencement of Part III and Part IV of this Act for the purpose of renting or lending it to the public.

43.—(1) Section 2(7) and (8) shall apply from the commencement of Parts II, III and IV of this Act in relation to films made on or after the first day of July, 1994.

(2) It is not an infringement of any right which the principal director has under this Act to do anything after the commencement of Part II of this Act pursuant to arrangements for the exploitation of a film made before the 19th day of November, 1992.

(3) Nothing in subparagraph (2) shall affect any right of a person to equitable remuneration under section 125.

(4) Subject to paragraph 36 and subparagraphs (1) to (3) of this paragraph, this Act shall apply to works made and to performances given before or after the commencement of Part II or III of this Act.

44.—(1) This paragraph shall apply to the construction of any reference in this Act to qualified persons.

(2) Where, at any time after the commencement of any provisions of this Act, the Government makes an order declaring that certain countries are excluded from the application of this Act the orders shall not affect any right existing before the making of that order.

Part VI
Transitional Provisions and Savings:
Databases

45.—(1) Where a database —

- (a) was created on or before the 27th day of March, 1996, and
(b) is a copyright work immediately before the commencement of Part V of this Act,

copyright shall continue to subsist in the database for the remainder of its copyright term.

(2) In this paragraph “copyright term” means the period of the duration of copyright under section 24.

46. Where —

- (a) the making of a database was completed on or after the first day of January, 1983, and
(b) on the commencement of Part V of this Act the database right begins to subsist in the database,

the database right shall subsist in the database for the period of 15 years commencing on the first day of January, 1999.

SECOND SCHEDULE

Part I

Number and Year	Short Title of Act	Extent of Repeal
No. 10 of 1963	Copyright Act, 1963	Entire Act other than section 59.
No. 19 of 1968	Performers' Protection Act, 1968	Entire Act.
No. 24 of 1987	Copyright (Amendment) Act, 1987	Entire Act.
No. 28 of 1998	Intellectual Property (Miscellaneous Provisions) Act, 1998	Sections 2 and 3.
No. 15 of 1989	Dublin City University Act, 1989	Section 6.
No. 14 of 1989	University of Limerick Act, 1989	Section 7.
No. 11 of 1997	National Cultural Institutions Act, 1997	Section 66.

Part II

Number and Year	Title of Enactment	Extent of Revocation
S.I.No. 26 of 1993	European Communities (Legal Protection of Computer Programs) Regulations, 1993	Entire Regulations.
S.I.No. 158 of 1995	European Communities (Term of Protection of Copyright) Regulations, 1995	Entire Regulations.

THIRD SCHEDULE

1. The agreements, treaties and conventions which shall be reckonable for the purposes of extension of qualification of copyright protection to works under the provisions of section 188 of this Act shall be:

- (1) Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971 and amended on October 2, 1979⁷.
- (2) Universal Copyright Convention, as revised at Paris on July 24, 1971.
- (3) EEA Agreement.
- (4) Agreement on Trade-Related Aspects of Intellectual Property Rights⁸, including Trade in Counterfeit Goods.
- (5) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on October 26, 1961⁹—in respect, only, of matters addressed by Article 5 and Article 6 of that Convention (see paragraph 2, below).
- (6) World Intellectual Property Organisation (WIPO) Copyright Treaty, adopted by the Diplomatic Conference at Geneva on December 20, 1996¹⁰.
- (7) World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty, adopted by the Diplomatic Conference at Geneva on December 20, 1996¹¹.

Qualifications on application

2. In respect of the Conventions specified in paragraph 1(5) of this Schedule, section 188 and this Schedule shall have effect in respect of matters addressed by Article 5 and Article 6 of that Convention, only.

* *Shorttitle.*
Entry into force : January 1, 2001, with the exception of sections 98, 198, 199 and 247, which have not yet entered into force.

Source: Communication from the Irish authorities.

** Arbitration Act, 1954 (1954, No. 26);
 Coinage Act, 1926 (1926, No. 14);
 Coinage Act, 1950 (1950, No. 32);
 Companies Acts, 1963 to 1999;
 Continental Shelf Act, 1968 (1968, No. 14);
 Copyright Act, 1801 (41 Geo. 3c. 107);
 Copyright Act, 1836 (6 & 7 Will. 4c. 110);
 Copyright Act, 1911 (1911, c. 46);
 Copyright Act, 1963 (1963, No. 10);
 Copyright (Amendment) Act, 1987 (1987, No. 24);
 Currency Act, 1927 (1927, No. 32) and Decimal Currency Acts, 1969 to 1990;
 Dublin City University Act, 1989 (1989, No. 15);
 Economic and Monetary Union Act, 1998 (1998, No. 38);
 Industrial and Commercial Property (Protection) Act, 1927 (1927, No. 16);
 Intellectual Property (Miscellaneous Provisions) Act, 1998 (1998, No. 28);
 King's Inns Library Act, 1945 (1945, No. 22);
 Local Government Act, 1994 (1994, No. 8);
 Maritime Jurisdiction Act, 1959 (1959, No. 22);
 National Cultural Institutions Act, 1997 (1997, No. 11);
 Performers' Protection Act, 1968 (1968, No. 19);
 Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict. c. 9);
 Public Offices Fees Act, 1879 (1879, c. 58);
 Radio and Television Act, 1988 (1988, No. 20);
 Statute of Limitations, 1957 (1957, No. 6);
 Statutes of Limitation, 1957 and 1991;
 Trade Marks Act, 1996 (1996, No. 6);
 Universities Act, 1997 (1997, No. 24);
 University of Limerick Act, 1989 (1989, No. 14).

¹ *Official Journal of the European Communities* (O.J.), No. L122, 17/5/1991, p. 42 (*Note in original text*).

² O.J. No. L346, 27/11/1992, p. 61 (*Note in original text*).
 See also *Copyright and Neighboring Rights Laws and Treaties*, REGIONAL LAWS —Text 1 -01 (*Editor's note*).

³ O.J. No. L290, 24/11/1993, p. 9 (*Note in original text*).
 See also *Copyright and Neighboring Rights Laws and Treaties*, REGIONAL LAWS —Text 2 -01 (*Editor's note*).

⁴ O.J. No. L248, 6/10/1993, p. 13 (*Note in original text*).
 See also *Copyright and Neighboring Rights Laws and Treaties*, REGIONAL LAWS —Text 3 -01 (*Editor's note*).

⁵ O.J. No. L077, 27/3/1996, p. 20 (*Note in original text*).
 See also *Copyright and Neighboring Rights Laws and Treaties*, REGIONAL LAWS —Text 5 -01 (*Editor's note*).

⁶ Gaeltacht: Irish-speaking regions of Ireland.

⁷ See *Copyright and Related Rights Laws and Treaties*, MULTILATERAL TREATIES —Text 7 -01 (*Editor's note*).

⁸ World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement); for the text of this Agreement, see *Copyright and Related Rights Laws and Treaties*, MULTILATERAL TREATIES —Text 10 -01 (*Editor's note*).

⁹ See *Copyright and Related Rights Laws and Treaties*, MULTILATERAL TREATIES —Text 8 -01 (*Editor's note*).

¹⁰ See *Copyright and Related Rights Laws and Treaties*, MULTILATERAL TREATIES —Text 5 -01 (*Editor's note*).

¹¹ See *Copyright and Related Rights Laws and Treaties*, MULTILATERAL TREATIES —Text 6 -01 (*Editor's note*).