

STATES OF JERSEY



DRAFT INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (JERSEY) LAW 201- (P.141/2010): COMMENTS

**Presented to the States on 24th November 2010
by the Economic Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

This report sets out the comments of the Economic Affairs Scrutiny Panel to the States on the *Draft Intellectual Property (Unregistered Rights) (Jersey) Law 201-*.

1. Upon deciding to review the proposals the Panel received a copy of the draft legislation from the Economic Development Department in April 2010, which it later forwarded to its adviser, Mr. Nic Garnett, Partner, HRO Grant Dawe LLP for detailed comment.
2. The Panel received the detailed report from its adviser in June 2010 and, following consideration, asked the Economic Development Department for further information. The adviser's report concludes that the *Draft Intellectual Property (Unregistered Rights) (Jersey) Law 201-* effectively translates the key provisions of the UK law into an efficient legislative proposal for Jersey.
3. After careful analysis and consideration the Panel decided that, given the special nature, complexity, and size of the draft legislation, the best course of action open to it was to publish the report received from its adviser (*Appendix 1*), the response from the Economic Development Department to the questions raised by that report (*Appendix 2*), and lastly its adviser's comments on the Department's response (*Appendix 3*), in order to best provide States Members with informed analysis ahead of the debate.

INTELLECTUAL PROPERTY RIGHTS (Unregistered Rights) (Jersey) LAW 201-
A Report for the Economic Affairs Scrutiny Panel

By

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June 18th 2010

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TERMS OF REFERENCE

The specific terms of reference for the following report are as follows:

- 1. To examine the rationale for the adoption of the proposed legislation Intellectual Property (Unregistered Rights) (Jersey) Law 201- ("IPURL").*
- 2. To establish whether the proposed legislation is appropriate for Jersey and constitutes the best method of achieving the objectives of the legislation.*
- 3. To examine any further issues relating to the topic that may arise in the course of the Scrutiny Review and which the Panel considers relevant.*

This report is prepared on the basis of a detailed comparison of the terms of the IPURL and the relevant parts of the Copyright, Designs and Patents Act 1988 of the United Kingdom as amended.

The report also takes into account key elements of the Economic Development Business Plan for Jersey 2010. These are expressed in the plan as follows:

High value economic diversification remains a top priority. The first major element of the new Intellectual Property legislation, the Unregistered Rights Law will, subject to States approval, come into being in 2010. This will open significant business opportunities in the e-commerce sector. It is now clear that the convergence between Intellectual Property (IP) and ecommerce is a vehicle for genuine diversification. During 2010, delivering a plan to exploit the value of IP/e-commerce convergence will be proposed.

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Strategic Development

[2.] Intellectual Property

- I. Develop modern intellectual property legislation and strategy in the areas of Copyright, Design Right, Performers' Protection, Patents and Registered Designs, Trademarks and Plant Breeders Rights;*
- II. Work with the Intellectual Property Services Industry to identify and take advantage of new intellectual property based business opportunities (legal services, patent and trademark agents, licensing bodies, trust and financial Services)*

While IPURL covers a range of rights in a variety of creative works and activities, except where specific reference is made otherwise the term "copyright" is in this report used as a convenient means to include reference to all the particular rights as defined in the draft legislation.

INTRODUCTION

This report addresses essentially two questions:

First, is IPURL the law, in terms of its substance, that Jersey needs to accomplish its internal objectives in fostering growth in creative and information based enterprises and, in terms of its form, is it efficient?

Second, will enacting IPURL allow Jersey to “plug in” to the global network of copyright laws in a way that will assure its position as a basis for developments with international reach?

Before proceeding to exam those questions it is worth looking at on a preliminary basis at some of the issues involved in modern copyright systems. This will provide important parameters for evaluation of IPURL.

Modern Copyright

Copyright law has become increasingly complex and in some respects controversial over recent decades for a number of reasons. The idea of copyright is a relatively simple one. It is embodied in national laws which provide the economic framework for the production of creative works. It does this by granting limited monopolies to creators in respect of the exploitation of their works, monopolies which are constructed on exclusive rights to authorise or prohibit the doing of certain acts – copying, broadcasting, etc – in relation to the protected works.

Good copyright laws also have another mission. They seek to establish the appropriate balance between the rights of the creators over their works and access to those works by consumers and other users. Finding the right balance is not easy. It is regularly disturbed by the arrival of new – disruptive - technologies which may either enhance the ability of creators to exercise control over their rights or make access to works more attainable for users. Disruptive technologies have had an enormous impact over the years on the evolution of copyright standards, with the last 15 years bringing the biggest changes through digital systems and the global expansion of the internet.

Some indication of the scale of change that can occur when the balance is lost can be gleaned from the plight of the sound recording industry. In 1999, global revenues for the recording industry amounted to some \$40 billion. 10 years later, under pressure from unauthorised file sharing of digital music files, those revenues had fallen by more than 30%.

Another driver of change in copyright law has been the increasing recognition of its importance to national economies and international trade. Most developed economies can point to studies which suggest that between 5-10% of their GDP depends on the existence and enforcement of copyright.

Conversely, many international trade disputes highlight the distortion which lack of copyright protection and its enforcement can bring to global trading conditions.

These two factors – technology and the economic importance of copyright – are behind the many initiatives undertaken at international, regional and national level to modernise copyright laws. In Europe, developments at the regional level have

had the most impact in the last 20 years with a series of EU Directives extending and harmonising the copyright as it is legislated at Member State level.

At the international level the two key developments in the last 15 years have been the introduction of new international standards for copyright, equipping it to address information society issues, and the reinforcement of established norms through TRIPs.

In seeking to update its intellectual property laws, Jersey must take account of all these developments, not necessarily as a response to a specific treaty obligation but simply to ensure that it provides a proper basis for enterprise and creativity in a globally connected and increasingly knowledge based economy.

It is against this background that examination of the 2 questions should be addressed.

IS THIS THE RIGHT LAW FOR JERSEY?

The extension to Jersey of the UK Copyright, Designs and Patent Act of 1988

The law embodied in IPURL, as presented for review, is for the most part a consolidation and restatement of the provisions of the UK Copyright, Designs and Patent Act of 1988 ("CDPA 1988") and its various amendments. IPURL therefore answers in its own right the most fundamental question regard copyright law reform in Jersey: is there a case for devising a new set of provisions designed specifically for local conditions and objectives? The answer would appear to be no.

The existing law on copyright in Jersey is the Loi (1913) Au Sujet Des Droits D'Auteur. Article 3 of that law provides as follows:

Ledit Acte de Parlement dit "Copyright Act 1911" en ce qui concerne l'île de Jersey, entrera en vigueur à la date de la promulgation dans l'île de la présente Loi.

Paragraph 36(1), Schedule 1 of the CDPA 1988 provides that the 1911 Act is to remain in force as part of the law of any dependent territory in which it was in force immediately before commencement of the copyright provisions of the 1988 Act. Paragraph 36(3) further provides that if it appears to Her Majesty that provision with respect to copyright has been made in the law of the Channel Islands otherwise than by extending the copyright provisions of the 1988 Act Her Majesty may by Order in Council repeal the 1911 Act as it has effect as part of the law of that territory.

Detailed analysis of the constitutional elements of the copyright law reform process are out of scope for the purposes of this report. It is assumed therefore that appropriate investigation of the constitutional requirements has been conducted to ensure that the provisions of IPURL as necessary replace any existing regulation of copyright in Jersey.

CDPA 1988 as amended by numerous instances of secondary legislation represents a comprehensive and modern statement of copyright. At the same

time it enables the United Kingdom to fulfil all its obligations at international level in the field of copyright.

Defining copyright law in the United Kingdom has taken many years, many revision processes, and consultations and embodies the input of many experts in the field.

It is submitted that by using the 1988 act as the basis of IPURL, a number of advantages have been secured:

- The 1988 Act and its various amendments represent an advanced form of copyright law which can be applied and further developed for use in Jersey under local conditions and authority
- The UK is party to all the relevant international treaties and has implemented all relevant European Directives in the field. Using the 1988 Act as the basis for IPURL ensure that copyright standards in Jersey meet all current international standards
- In localising the 1988 Act within IPURL the opportunity has been wisely and effectively taken to consolidate the various provisions of the UK copyright law.

Analysis of IPURL

IPURL contains 411 Articles and 2 Schedules. 217 of these Articles are identical to the corresponding provisions of the UK law; 58 of the Articles have no directly corresponding provision in UK law. The remaining articles differ from UK law in specific details of drafting.

A number of provisions of UK law are not incorporated in IPURL

A complete comparative analysis of IPURL with UK law is contained in **Annex A**.

The key areas of substantive differentiation between IPURL and the UK law are principally the following:

1. IPURL omits the lending right. Lending in UK laws means making a copy of a qualifying work available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage through an establishment which is accessible to the public.
2. In some areas of UK law, notably in exceptions to copyright in favour of use of copyright materials in research and for educational purposes, the exception is limited to research and educational which is not conducted for profit. That limitation is omitted in IPURL
3. In a number instances – for example in Article 70: exception to copyright for public inspection of copyright material pursuant to statute – IPURL adds reference to communicating such material to the public.
4. The provisions of the UK law relating to the constitution and functions of the Copyright Tribunal are replaced in IPURL with detailed provisions (in Part 8, Articles 380-389) regarding the Licensing Authority.

5. A number of Articles in IPURL contain different provisions regarding the scale of penalties for certain offences in relation to copyright
6. A number of articles in IPURL contain reference to a longer period of limitation (10 years as opposed to 6 years in UK law)
7. Articles 399 to 410 contain extensive provisions enabling the scope and the content of IPURL to be extended by Ministerial Order.
8. Schedule 1 contains detailed provisions relating to the liability of service providers for infringing acts committed on the networks they administer.

Efficiency of IPURL

Efficiency in relation to a law such as IPURL covers various aspects:

- Is the law effectively organised so that its provisions can be efficiently navigated by its users?
- Are its provisions susceptible to correct interpretation?
- Does it contain the necessary mechanisms for review, revision and promulgation?

In all these respects IPURL appears fit for purpose. Indeed, in its organisation, IPURL represents a major contribution to better access to many of the provisions of the UK law because the drafters of IPURL have wisely and very effectively taken the opportunity to consolidate the many provisions of the CDPA 1988 and its various amendments. Identifying the specific provisions of UK is somewhat challenging given the fact they are widely dispersed through an array of secondary enactments.

Future Proofing

Another aspect of the efficiency of IPURL is whether it represents to the fullest extent the law upon which it is based.

As noted earlier in this report, copyright law has constantly to respond to new challenges from technology. The UK origins of copyright law relate to the development of commercial printing and throughout its evolution copyright has attempted to catch up with the latest form of disruptive technology. The vast amount of secondary legislation in the UK since the CDPA 1988 was enacted bears vivid testimony to this process. It is therefore not only appropriate but also necessary that IPURL contains, within Articles 399 to 410 the necessary powers for the Minister, by Order, to update the law as necessary and according to local needs.

Schedule 1 is also an important addition to the UK law base in so far as it spells out in greater detail an important area of regulation, that of ISP liability. Since networked services and particularly the internet became a medium for distribution of copyright works attempts have been made to identify the respective roles and responsibilities of copyright owners and service providers when things go wrong.

Who should police networks and attempt to stop the unauthorised use of copyright works, for example through unauthorised file sharing?

Copyright owners argue that ISPs should bear the brunt of the enforcement burden given that it is their services and networks which provide the context for the infringing acts. Copyright owners also argue that ISPs are best placed to interrupt infringing activity. For their part, ISPs argue that their networks are essentially "dumb pipes" and that they are mere conduits for infringing traffic over which they cannot and should not be expected to exercise control.

To a significant extent the ISP arguments have prevailed. Most modern copyright laws provide what are referred to as "safe harbour" provisions whereby ISPs can generally escape liability for infringing activities on their networks provided they respond expeditiously to requests for action by affected copyright owners.

The CDPA 1988 contains those provisions which IPURL in turn incorporates and develops. However, IPURL does not however take account of an important new development in UK law: the changes to copyright brought about by the Digital Economy Act of 2010.

Detailed review of the new UK provisions is outside the scope of this report but some of its key provisions are worth noting. The Digital Economy Act addresses in some of its provisions the issue of unauthorised online use of copyright materials, mostly in the form of file sharing. As noted above, the music industry has lost a significant part of its market globally as a result of file sharing (although views differ as to the extent of the loss related directly to file sharing). In the new Act Ofcom is given important new powers and responsibilities for reviewing developments and instituting technical measures as necessary to deal with wide scale online infringements:

Digital Economy Act 2010

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- (1) The Secretary of State may direct OFCOM to—*
- (a) assess whether one or more technical obligations should be imposed on internet service providers;*
 - (b) take steps to prepare for the obligations;*
 - (c) provide a report on the assessment or steps to the Secretary of State.*
- (2) A "technical obligation", in relation to an internet service provider, is an obligation for the provider to take a technical measure against some or all relevant subscribers to its service for the purpose of preventing or reducing infringement of copyright by means of the internet.*
- (3) A "technical measure" is a measure that—*
- (a) limits the speed or other capacity of the service provided to a subscriber;*
 - (b) prevents a subscriber from using the service to gain access to particular material, or limits such use;*
 - (c) suspends the service provided to a subscriber; or*
 - (d) limits the service provided to a subscriber in another way.*

One area of possible future development which is understood to fall within the scope of this provision is the introduction of the so-called "graduated response" or

“three strikes” approach. This means the establishment of process whereby internet users engaged in repeat infringing behaviour can be given a series of warnings and, in the absence of any response thereto and continuation of infringing behaviour, have their internet access suspended or terminated.

A law, known as HADOPI (after the name of the agency established to administer the system) was introduced in France in 2009. Similar measures are being instituted privately by EIRCOM, a leading ISP in Ireland and draft “three strikes” legislation is currently before the New Zealand parliament.

A key question for Jersey is whether IPURL should be further developed to incorporate the new provisions in the UK law. While posing that question, however, it is important to note that there is no provision of international copyright law that requires the UK or any other country to legislate on “three strikes” provisions.

WILL IPURL SUPPORT JERSEY AT THE INTERNATIONAL LEVEL?

This is the second key question and it falls to be examined in two ways. First, will IPURL enable Jersey to “plug into” the international copyright recognition so that the enterprise and output of its citizens and businesses enjoy protection throughout the world. Second, will IPURL create within Jersey a solid enough copyright regime to attract inward investment in the areas of enterprise it supports.

Before answering these questions is worth examining the general position of Jersey in relation to the World Trade Organisation. This was admirably expressed in the following way by Richard Plender QC in the article *The Channel Islands' Position In International Law*.

The Channel Islands do not participate directly in the work of the World Trade Organization; but in common with other small jurisdictions they are liable to be radically affected by it. Indeed, the Channel Islands have a special propensity to be affected by that Organization and by agreements concluded under its aegis since the islands are subject to certain rules of Community law including those governing customs matters and quantitative restrictions. It is by no means easy to determine the extent to which that expression embraces rules applied pursuant to certain of the agreements ratified by the European Community pursuant to the World Trade Organization. It is established, however, that the European Community has sole competence, pursuant to Article 113 of the EC Treaty, to conclude multilateral agreements on trade in goods, under the aegis of that body; and that the Community is jointly competent with the Member States to conclude the General Agreement on Trade in Services and the TRIPS Agreement.

The Agreement establishing the World Trade Organization was approved by Council Decision 94/800/EC of December 22nd, 1994 and thus formally incorporated into Community law. The European Court has indicated that some, at least, of the provisions laid down by agreements concluded under the aegis of the World Trade Organization constitute rules governing the removal of quantitative restrictions on trade, including trade between Member States. That appears, for instance from the ruling given in

response to a request from the Hoge Raad in Case C-316/95. Generics BV v Smith Kline & French Laboratories, where the point at issue was the TRIPS Agreement.

While some aspects of TRIPS are concerned with the promotion of free trade in services and are therefore inapplicable to the Channel Islands, others relate to the removal of obstacles to trade in goods and thus appear in principle applicable. The TRIPS Agreement, which came into effect on January 1st, 1995, is a part of the Marrakesh Agreement establishing the World Trade Organization, and joined to date by 132 members. It is the most comprehensive multilateral agreement on intellectual property. It establishes substantially higher standards of protection for a full range of industrial property rights than are embodied in current international agreements such as the Paris Convention for industrial property (patents, trademarks and trade secrets) or the Berne Convention for copyrights. The intellectual property rights covered by the TRIPS Agreement are: copyrights, patents, trademarks, industrial designs, trade secrets (undisclosed information), integrated circuits (semiconductors), and geographical indications.

In the area of copyrights, the TRIPS Agreement obliges the parties to comply with provisions of the Berne Convention, except for that Convention's requirements on moral rights; protects computer programs as literary works and databases as compilations under copyright; imposes an immediate obligation on parties to grant owners of computer programs and sound recordings the right to authorize or prohibit the rental of their products; establishes a 50-year term for protection of sound recordings, as well as requiring signatories to provide protection for existing sound recordings and sets a minimum 50-year term for protection of motion pictures and other works where companies may be the author.

It appears inevitable that both bailiwicks of the Channel Islands will have to adopt legislation to secure the application of the TRIPS Agreement, in so far as it has a bearing upon the free movement of goods.

As noted, TRIPs reinforces the provisions of the Berne Convention and brings it within the World Trade Organisation. Other provisions of international are also relevant, most notably the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty of 1996. These two treaties were established to extend and adapt certain areas of copyright law to the new challenges of the information Society. They also form the basis for a number of the EU Directives established in recent years.

As further noted above, UK law is compliant with all relevant international provisions related to copyright and as such the CDPA 1988 as amended represents a firm basis for international integration. There is nothing in IPURL as prevented for review which would prevent it operating in the same way for Jersey.

CONCLUSIONS & RECOMMENDATIONS

The Scrutiny Panel is advised that with respect to the considerations identified in the Terms of Reference IPURL effectively translates the key provisions of the UK law into an efficient legislative proposal for Jersey.

That said, the Scrutiny Panel may wish to consider a number of areas for deeper investigation at this stage:

1. The question of future proofing and in particular whether there is a case at this stage of incorporating into IPURL analogous provisions those contained in the UK Digital Economy Act 2010, specifically relating to the use of technical measures.
2. What is the plan for the internationalising Jersey's new copyright regime based on IPURL: what are the objectives; what are the means and what are the timelines?
3. There may be a case for a deeper examination of the copyright law as proposed through IPURL and other areas of law, for example those related to online commerce and personal data protection. Many aspects of modern copyright law are closely interconnected with other areas of emerging regulation.
4. There may be a case, for example in relation to certain provisions in IPURL relation to licensing schemes and the Licensing to conduct an Economic Impact Assessment to ensure that what is proposed is consistent with the scale of actual need.

Annex A

Intellectual Property (Unregistered Rights) (Jersey) Law 201-

Comparison of Articles with UK Copyright Law

| Article | UK Section | Comparison | Note |
|---------|------------|------------|---|
| 1 | | See Note | Restatement of definitions found in CDPA1988 |
| 2 | | | Restatement of definitions found in CDPA1988 |
| 3 | | Idem | |
| 4 | Section 6 | Idem | |
| 5 | | Idem | |
| 6. | | Idem | |
| 7 | | See Note | Art. 7 (1) localised in accordance with Education (Jersey) Law 1999 |
| 8 | | | Corresponding provision not found in UK law |
| 9 | | Idem | |
| 10 | | See Note | Here and throughout reference to "lending" is excluded |
| 11 | | Idem | |
| 12 | | | Corresponding provision not found in UK law |
| 13 | | Idem | |
| 14 | | Idem | |
| 15 | | Idem | |
| 16 | | Idem | |
| 17 | | See Note | 17 (3) (d) omits reference to "lending" |
| 18 | | Idem | |
| 19 | | Idem | |
| 20 | S. 153 | Idem | |
| 21 | S. 154 | See Note | 21(2)(d) adds provision to making of |

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| | | | order under Art 399 |
| 22 | | See Note | 22(2)(b) adds provision for order under Art 399 |
| 23 | | Idem | |
| 24 | S. 11 | Idem | |
| 25 | S.12 | Idem | |
| 26 | S.13A | Idem | |
| 27 | S.13B | Idem | |
| 28 | S.14 | Idem | |
| 29 | | Idem | |
| 30 | S.16 | Idem | |
| 31 | 17 | Idem | |
| 32 | 18 | See Note | Reference to "protected are" instead of EEA in UK Law |
| 33 | 18A | See Note | Reference to "lending" omitted |
| 34 | 19 | Idem | |
| 35 | 20 | Idem | |
| 36 | 21 | Idem | |
| 37 | 22 | See Note | "into Jersey" substituted for "into the protected area" (UK) |
| 38 | 23 | Idem | |
| 39 | 24 | Idem | |
| 40 | 25 | Idem | |
| 41 | 26 | Idem | |
| 42 | 27 | See Note | Paragraphs (5) and (6) added |
| 43 | 28 | See Note | Reference to "except as expressly provided by this law" in paragraph(2) |
| 44 | | See Note | Provides power to amend |
| 45 | 28A | See Note | Reference to "other than a computer programme of database" omitted |

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| 46 | 29 | See Note | <p>Paragraph 1:</p> <p>Omits: "for a non-commercial purpose" after "research"</p> <p>Omits: "provided it is accompanied by sufficient acknowledgement" after work</p> <p>Adds: "or, in the case of a published edition, in the typographical arrangement"</p> |
| 47 | 30 | See Note | <p>Paragraph (1):</p> <p>Omits: "and provided that the work has been made available to the public"</p> <p>Paragraph 3</p> <p>Omits: "where this would be impossible for reasons of practicality or otherwise"</p> |
| 49 | 31A | See Note | <p>Omits after paragraph 2:</p> <p>"If the master copy is of a database or part of a database and making of the accessible copy would infringe copyright in the database"</p> |
| 50 | 31B | See Note | <p>Paragraph (1)(a)</p> <p>Omits: "commercially published"</p> <p>Paragraph (1)(b)</p> <p>Omits: "commercially"</p> <p>General:</p> <p>Omits:</p> <p>Definition of "Approved Body"</p> <p>Reference to "lending"</p> |
| 51 | 31C | See Note | <p>Adds paragraph 9:</p> <p>"A notice under paragraph (8)(b) shall be accompanied by the prescribed fee, if any"</p> |
| 52 | 31D | See Note | <p>Paragraph (1)(a) substitutes "in operation" for "in force"</p> |

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| 53 | 31E | Idem | |
| 54 | 31F | See Note | Omits reference to "lending" Adds paragraph (6)(e): "who has a learning disability that mainly affects reading" |
| 55 | 32 | See note | Omits reference to requirement for acknowledgement and limitation to non-commercial Paragraph (6) omits reference to "communication to the public" |
| 56 | | Idem | |
| 57 | 35 | Idem | |
| 58 | | See Note | Omits requirement of acknowledgement and reference to limiting purposes to non-commercial purposes |
| 59 | 36 | See Note | Omits reference to "acknowledgement" and "non-commercial purposes" Paragraph (1) omits reference to "published" Paragraph (6) omits "communication to the public" |
| 60 | 37 | Idem | |
| 61 | | See Note | Omits limitation of research to "non-commercial purposes" Adds paragraphs (2) and (3) providing for fees payable |
| 62 | 39 | See Note | In paragraph (1) omits reference to "part of" a work Omits reference to "non-commercial" in relation to research purposes Adds provisions for fees payable |
| 63 | 40 | Idem | |
| 64 | 41 | Idem | |
| 65 | 42 | Idem | |

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| 66 | 43 | See Note | Article references “document, film, sound recording or other matter” as opposed to “literary, artistic or musical work” in UK law. Remainder of Article departs significantly from UK law |
| 67 | 44 | Idem | |
| 68 | | See Note | Idem but adapted to local constitution |
| 69 | | Idem | |
| 70 | 47 | See Note | Paragraph (2) adds: “or the communication of the material to the public” Paragraph (6) adds: Definition of enactment |
| 71 | 48 | See Note | Paragraph (2): substitutes “any copyright work” for literary, dramatic, musical or artistic work” adds “and communicate the work to the public” Paragraph (3) adds “and communicate the work to the public” Adds new paragraph 4 referencing previously available works that are no longer available |
| 72 | 49 | Idem | |
| 73 | 50 | Idem | |
| 74 | 50A | Idem | |
| 75 | 50B | Idem | |
| 76 | 50BA | Idem | |
| 77 | 50C | Idem | |
| 78 | 50D | Idem | |

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| 79 | 51 | Idem | |
| 80 | 52 | Idem | |
| 81 | 53 | Idem | |
| 82 | 54 | Idem | |
| 83 | 55 | Idem | |
| 84 | 56 | Idem | |
| 85 | 57 | Idem | |
| 86 | 58 | Idem | |
| 87 | 59 | Idem | |
| 88 | 60 | Idem | |
| 89 | 61 | See Note | Paragraph (4) (a) omits reference to non-commercial research |
| 90 | 62 | See Note | Paragraph (3) substitutes " by anything done" for "the issue to the public of copies" |
| 91 | 63 | See Note | Paragraph (1) adds: "or to communicate it to the public" |
| 92 | 64 | Idem | |
| 93 | 65 | Idem | |
| 94 | 66A | See Note | Omits reference to International Organisations |
| 95 | 67 | See Note | Omits various references in UK law Paragraph (2) (c) should be (2)(b) |
| 96 | 68 | Idem | |
| 97 | 69 | See Note | Paragraph (2)(a) omits reference to Paragraph 20 of Schedule 12 to the Communication Act 2003 |
| 98 | | Idem | |
| 99 | | Idem | |
| 100 | 72 | See Note | Omits reference to "excepted sound recording" |

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| 101 | 73 | See Note | <p>Paragraph (2) omits reference to "if the re-transmission is in pursuance of a relevant requirement"</p> <p>Paragraph (3), line 3 omits "re-" in relation to "transmit"</p> <p>General omission of reference to relevant requirement provisions in UK law</p> <p>Paragraph (4) omits reference to Part 3 of the Communications Act 2003</p> <p>Royalty provisions of 73A in UK law omitted</p> |
| 102 | 74 | See Note | Paragraph (1) omits reference to "lending" |
| 103 | 75 | Idem | |
| 104 | 76 | Idem | |
| 105 | 77 | Idem | |
| 106 | 78 | Idem | |
| 107 | 79 | Idem | |
| 108 | 80 | Idem | |
| 109 | 81 | See Note | Paragraph (7) adds definition of "disclaimer" |
| 110 | 82 | See Note | Paragraph (3) adds definition of "disclaimer" |
| 111 | 83 | Idem | |
| 112 | 84 | Idem | |
| 113 | 85 | Idem | |
| 114 | 86 | Idem | |
| 115 | 87 | Idem | |
| 116 | 88 | Idem | |
| 117 | 89 | Idem | |
| 118 | 90 | Idem | |
| 119 | 91 | Idem | |

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| 120 | 92 | Idem | |
| 121 | 93 | Idem | |
| 122 | 93A | Idem | |
| 123 | 93B | Idem | |
| 124 | 93C | See Note | Paragraph (2) substitutes “ the permission of the licensing authority” for “special leave of the [Copyright] Tribunal” |
| 125 | 94 | Idem | |
| 126 | 95 | See Note | Paragraph (1)(c)(i) and (ii) and paragraph (5) substitute references to “executors” and “administrators” for “personal representatives” in UK Law |
| 127 | 96 | Idem | |
| 128 | 97 | See Note | General – omits reference to injunction against service provider (UK law 97A) and undertaking to take licence of right (UK law 98) |
| 129 | 99 | Idem | |
| 130 | 113 | See Note | Substitutes period of 10 years limitation for 6 years in paragraphs (1) and (2) |
| 131 | 100 | Idem | |
| 132 | 101 | Idem | |
| 133 | 101A | Idem | |
| 134 | 102 | Idem | |
| 135 | 103 | Idem | |
| 136 | 104 | Idem | |
| 137 | 105 | Idem | |
| 138 | 106 | Idem | |
| 139 | 107 | See Note | Generally substitutes “shall be guilty of” for “commits” Paragraphs (5) – (7) include variations to penalties Paragraphs (8) and (9) include provisions for corporate entities |

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| 140 | | See Note | Paragraph (3)(a) substitutes a longer period of limitation – 10 years for 6 years. |
| 141 | 111 | See note | Localisation of provisions via paragraphs (5) to (7) |
| 142 | 112 | Idem | |
| 143 | 114 | See Note | Paragraph (4) adds: “specified by rules of court” Paragraph (8) adds power of Royal Court to make rules |
| 144 | 114A | See Note | Paragraph 2 omits reference to the Trade Descriptions Act Paragraph (7) adds reference to making an “application to state a case”. |
| 145 | 116 | Idem | |
| 146 | 117 | See Note | Omits reference to “lending” |
| 147 | 118 | Idem | |
| 148 | 119 | Idem | |
| 149 | 120/ 128A | See Note | Omits reference to “excepted sound recordings” |
| 150 | 121 | Idem | |
| 151 | 122 | See Note | Paragraph (2) substitutes “permission” for “special leave” |
| 152 | 123 | See Note | Paragraph (6) substitutes “notified” for “certified” |
| 153 | 124 | See Note | Omits reference to “lending” |
| 154 | 125 | Idem | |
| 155 | 126 | See Note | Paragraph (3) substitutes “an application under paragraph(1)” for “reference” |
| 156 | 127 | Idem | |
| 157 | 128 | Idem | |
| 158 | 129 | Idem | |
| 159 | 130 | Idem | |

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| 160 | 131 | Idem | |
| 161 | 132 | Idem | |
| 162 | 133 | See Note | Omits reference to "lending" |
| 163 | 134 | See Note | Omits reference to equivalent of S.73A of UK Law |
| 164 | 135 | Idem | |
| 165 | 135A(5) | Idem | |
| 166 | 135A | Idem | |
| 167 | 135B | Idem | |
| 168 | 135C | Idem | |
| 169 | 135D | Idem | |
| 170 | 135E | Idem | |
| 171 | 135F | Idem | |
| 172 | 135G | idem | |
| 173 | 135H | See Note | Does not subject power of Minister to amend by Order to "transitional provisions". |
| 174 | 136 | Idem | |
| 175 | 137 | See Note | Paragraph (1) substitutes "copies of copyright works" for "reprographic copies of published literary, dramatic, musical and artistic works" |
| 176 | 138 | See Note | Paragraph (1) substitutes "revocation" for "discharge" |
| 177 | 139 | See Note | Paragraph (2) substitutes "determination" for "order" and substitutes "Court" for the "Tribunal" Paragraph (4) substitutes "determination" for "order" |
| 178 | 140 | | Paragraph (1): Adds "communication to the public" Substitutes "copies of copyright works" for (a) Published literary, dramatic, |

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| | | | <p>musical and artistic works</p> <p>(b) Typographical arrangements</p> <p>Paragraph (4) (a) adds "communication to the public; omits reference to reprographic copies and non-commercial purposes."</p> |
| 179 | 141 | See Note | <p>Paragraph (1) adds "communicating to the public"</p> <p>Paragraph (2) (a) substitutes:</p> <p>"A licensing scheme notified for the purposes of this Article in accordance with Article 180 has been established" for "certified"</p> <p>Paragraph (3) adds "communicating to the public"</p> <p>Paragraph (5) adds "communicating to the public"</p> <p>Paragraph (6) adds "otherwise than in accordance with an Order under paragraph (1)"</p> <p>Paragraph (8) omits "and may be revoked"</p> <p>Paragraph (9) added</p> |
| 180 | | See Note | No corresponding provision in UK law |
| 181 | 144A | See Note | Cable re-transmission right exists in respect of use as specified in paragraphs (1)(a) and (b). |
| 182 | | See Note | No corresponding provision in UK law |
| 183 | | See Note | No corresponding provision in UK law |
| 184 | 163 | See Note | Paragraph (5) applies term provisions to film; no corresponding provision in UK law |
| 185 | 167 | See Note | Provisions adapted to Jersey constitution |
| 186 | | See Note | No corresponding provision in UK law |
| 187 | 164 | See Note | Paragraph (1) adds: |

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| | | | Order in Council Paragraph (20 restates same substantive provision as adapted pursuant to paragraph (1) |
| 188 | 168 | See Note | Paragraph (1) adds "prescribed" [international organisations] |
| 189 | 169 | See Note | Paragraph (4) substitutes "person" for "individual" |
| 190 | 296A | Idem | |
| 191 | | Idem | |
| 192 | SI 1997/3032 Part III 12 | See Note | Paragraph (1) adds: "licensing body" "licensing scheme" "qualifying country" "qualifying person" Paragraph (2): no corresponding provision in UK law |
| 193 | SI 1997/3032 Part III 13 | Idem | |
| 194 | SI 1997/3032 Part III 14 | See Note | Paragraphs (3)(4) and (5) added |
| 195 | SI 1997/3032 Part III 15 | idem | |
| 196 | SI 1997/3032 Part III 16 | Idem | |
| 197 | SI 1997/3032 Part III 17 | Idem | |
| 198 | SI 1997/3032 Part | See Note | Article localised for Jersey |

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| | III 18 | | |
| 199 | SI 1997/3032 Part III 19 | Idem | |
| 200 | | | No corresponding provision in UK Law |
| 201 | | | No corresponding provision in UK Law |
| 202 | | | No corresponding provision in UK Law |
| 203 | | | No corresponding provision in UK Law |
| 204 | SI 1997/3032 Part III Schedule 1 1 | Idem | |
| 205 | SI 1997/3032 Part III Schedule 1 2 | See Note | Paragraph 2 adds: "all or a substantial part of" |
| 206 | SI 1997/3032 Part III Schedule 1 3 | See Note | Paragraph (4) adds definition of "enactment" |
| 207 | SI 1997/3032 Part III Schedule 1 4 | See Note | Paragraph (3) substitutes "made available to the public" for published Paragraph (4) conditions paragraph (3) where there is no corresponding provision in UK law |
| 208 | SI 1997/3032 Part III Schedule 1 5 | See Note | Adds: "without prejudice to the generality of Article 206" |
| 209 | SI 1997/3032 Part III | Idem | |

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| | Schedule 1 6 | | |
| 210 | SI 1997/3032 Part III 21 | Idem | |
| 211 | | | No corresponding provision in UK law |
| 212 | | | No corresponding provision in UK law |
| 213 | SI 1997/3032 Part III 22 | Idem | |
| 214 | SI 1997/3032 Part III Schedule 2 1 | Idem | |
| 215 | | | No corresponding provision in UK law |
| 216 | | | No corresponding provision in UK law |
| 217 | | | No corresponding provision in UK law |
| 218 | | | No corresponding provision in UK law |
| 219 | SI 1996/2967 16 | See Note | Paragraph (2)(c) substitutes "loan" for "lending" |
| 220 | | | No corresponding provision in UK law |
| 221 | | | No corresponding provision in UK law |
| 222 | | | No corresponding provision in UK law |
| 223 | | | No corresponding provision in UK law |
| 224 | | | No corresponding provision in UK law |
| 225 | | | No corresponding provision in UK law |
| 226 | 296/ 296ZF | See Note | Article 226 combines various definitions distributed through the relevant part of the UK law |
| 227 | 296 (1) – (2) | Idem | |

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| 228 | 296 (3) | Idem | |
| 229 | 296 (4) – (5) | Idem | |
| 230 | | | No corresponding provision in UK law |
| 231 | 296ZD (1) – (2) | Idem | |
| 232 | 296ZD (3) | Idem | |
| 233 | | | No corresponding provision in UK law |
| 234 | | | No corresponding provision in UK law |
| 235 | 296ZB | See Note | Paragraph (1) (c) omits “advertises for sale of hire” Paragraph (2): no corresponding provision in UK law Paragraph (4) : no corresponding provision in UK law Paragraph (8) – (10): no corresponding provision in UK law |
| 236 | | | No corresponding provision in UK law |
| 237 | | | No corresponding provision in UK law |
| 238 | | | No corresponding provision in UK law |
| 239 | | | No corresponding provision in UK law |
| 240 | | | No corresponding provision in UK law |
| 241 | | | No corresponding provision in UK law |
| 242 | | | No corresponding provision in UK law |
| 243 | 296ZE | See Note | Paragraph (3) adds: “ A notice of complaint issued under paragraph (2) shall be accompanied by the prescribed fee” Paragraph (5),(10),(15),(16): no corresponding provision under UK law |
| 244 | 296ZE (11) | See Note | Paragraphs (1) – (3) restate the substance of UK law Paragraph (4) adds and defines “permitted acts” |

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| 245 | 296ZG (1) – (4) | Idem | |
| 246 | 296ZG (5) | Idem | |
| 247 | 296ZG (6) | See Note | Substance of UK law restated |
| 248 | 296ZG (8) –(9) | Idem | |
| 249 | | | No corresponding provision in UK law |
| 250 | 297 | See Note | Paragraph (1) substitutes “shall be guilty of” for “commits” and specifies fine of level 4 for fine of level 5 Paragraph (2): no corresponding provision in UK law |
| 251 | 297A | See Note | Paragraph (1) substitutes “shall be guilty of” for “commits” Paragraphs (4) – (5) introduce relevant provision of UK law relating to corporate entities |
| 252 | 297C | See Note | Paragraph (2) omits provision relating to the Trade Descriptions Act |
| 253 | 298/ 299(4) | See Note | Paragraph (4) adds provision of UK law s. 299 (4) |
| 254 | | | No corresponding provision in UK law |
| 255 | 197 | Idem | |
| 256 | 191A | | Paragraph (2) adds “In this Part, “performer’s non-property rights” means the rights conferred by Articles 265 to 267” |
| 257 | 181 | Idem | |
| 258 | | | No corresponding provision in UK law |
| 259 | 180 (4) | Idem | |
| 260 | | | No corresponding provision in UK law |
| 261 | 182B | Idem | |
| 262 | 182C | See Note | Paragraph (1) omits “or lends” |
| 263 | 182CA | Idem | |

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| 264 | 182D | Idem | |
| 265 | 182 | Idem | |
| 266 | 183 | Idem | |
| 267 | 184 | Idem | |
| 268 | 185 | Idem | |
| 269 | 186 | Idem | |
| 270 | 187 | Idem | |
| 271 | 188 | Idem | |
| 272 | 191 | Idem | |
| 273 | 189 Schedule 2 1 | Idem | |
| 274 | | | No corresponding provision in UK law |
| 275 | Schedule 2 1A | idem | |
| 276 | Schedule 2 2 | See Note | Paragraph (1) omits "provided that the performance has been made available to the public" Paragraph (3) adds "An agreement is void to the extent that it purports to prohibit or restrict an act which would, apart from this Article, infringe any right conferred by Chapter 2" |
| 277 | Schedule 2 3 | Idem | |
| 278 | Schedule 2 4 | See Note | Paragraph (1) omits "and the instruction is for a non-commercial purpose" |
| 279 | Schedule 2 5 | | Paragraph (3) adds Any provision made under Article 7(2) with respect to the application of Article 57 also applies for the purposes of this Article |

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| 280 | Schedule 2 6 | Idem | |
| 281 | Schedule 2 7 | Idem | |
| 282 | Schedule 2 8 | Idem | |
| 283 | Schedule 2 9 | See Note | Paragraph (2) adds "The rights conferred by Chapter 2 are not infringed by the issue or communication to the public of copies of the report of a committee of inquiry or public inquiry" |
| 284 | Schedule 2 10 | Idem | |
| 285 | | | No corresponding provision in UK law |
| 286 | Schedule 2 11 | See Note | Provision substitutes "enactment" for Act of Parliament |
| 287 | Schedule 2 12 | Idem | |
| 288 | Schedule 2 13 | Idem | |
| 289 | Schedule 2 14 | Idem | |
| 290 | Schedule 2 15 | See Note | Provision omits "(b) that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain" "(d) that the proceeds from any goods or services sold by, or on behalf of, the organisation - (i) in the place where the sound recording is heard, and (ii) on the occasion when the sound |

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| | | | recording is played, are applied solely for the purposes of the organisation." |
| 291 | Schedule 2 16 | Idem | |
| 292 | Schedule 2 17 | Idem | |
| 293 | Schedule 2 17A | Idem | |
| 294 | Schedule 2 17B | Idem | |
| 295 | Schedule 2 18 | See Note | Provision omits reference to "excepted sound recording" |
| 296 | Schedule 2 19 | | Provision omits "(3) Where - (a) the re-transmission by cable is in pursuance of a relevant requirement, but (b) to any extent, the area in which the re-transmission by cable takes place ("the cable area") falls outside the area for reception in which the broadcast is made ("the broadcast area"), the re-transmission by cable (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any performance or recording included in the broadcast shall, subject to sub- paragraph (4), be treated as licensed by the owner of the rights conferred by Part II in relation to the performance or recording, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the re- transmission by cable of the broadcast as may be agreed or determined in default of agreement by |

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| | | | the Copyright Tribunal. (4) Sub-paragraph (3) does not apply if, or to the extent that, the re-transmission of the performance or recording by cable is (apart from that sub-paragraph) licensed by the owner of the rights conferred by Part II in relation to the performance or recording." |
| 297 | Schedule 2 20 | Idem | |
| 298 | Schedule 2 21 | Idem | |
| 299 | 191B | See Note | Paragraph (1) omits "personal" |
| 300 | 191C | Idem | |
| 301 | 191D | See Note | Paragraph (1) adds "apart from Chapter 7" |
| 302 | 191E | Idem | |
| 303 | 191F | See Note | Paragraph (1) substitutes "is" for "shall be" |
| 304 | 191G | Idem | |
| 305 | 191H | Idem | |
| 306 | 192A | See Note | Paragraph (5) substitutes "an executor or administrator" for "personal representatives" |
| 307 | 192B | Idem | |
| 308 | 193 | Idem | |
| 309 | 190 | Idem | |
| 310 | 191I | Idem | |
| 311 | 191J | Idem | |
| 312 | 191L | Idem | |
| 313 | 191M | Idem | |
| 314 | 194 | Idem | |
| 315 | 195 | Idem | |

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| 316 | 203 | See Note | Paragraphs (1) and (2) substitute 10 years for 6 years |
| 317 | 196 | Idem | |
| 318 | 198 | See Note | Paragraph (7) substitutes 10 years for 2 years in relation to an offence under paragraph (2) Paragraph (8) substitutes level 4 for level 5 Paragraphs (9) and (10) extend application to corporate entities and officers thereof |
| 319 | 199 | Idem | |
| 320 | 201 | See Note | Paragraph (2) substitutes level 4 for level 5 |
| 321 | 204 | See Note | Paragraph (3) adds “specified in the rules” Paragraph (7) adds The power in the Royal Court (Jersey) Law 1948 to make rules of court shall include the power to make rules for the purposes of this Article |
| 322 | 204A | Idem | |
| 323 | | | No corresponding provision in UK law |
| 324 | Schedule 2A 1 | Idem | |
| 325 | Schedule 2A 2 | Idem | |
| 326 | | | No corresponding provision in UK law |
| 327 | | | No corresponding provision in UK law |
| 328 | | | No corresponding provision in UK law |
| 329 | 205C | Idem | |
| 330 | 205D | Idem | |
| 331 | 205E | Idem | |

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| 332 | 205F | Idem | |
| 333 | 205G | Idem | |
| 334 | 205H | Idem | |
| 335 | 205I | Idem | |
| 336 | 205J | Idem | |
| 337 | 205K | Idem | |
| 338 | 205L | Idem | |
| 339 | 205M | Idem | |
| 340 | 205N | Idem | |
| 341 | | | Provision collects various definitions spread through different sections of UK law |
| 342 | | | Provision collects various definitions relating to Crown Use, States Use etc. spread through different sections of UK law |
| 343 | | | No corresponding provision in UK law |
| 344 | 228 | Idem | |
| 345 | 260 | Idem | |
| 346 | 213 | Idem | |
| 347 | 215 SI 1989/ 1100 The Design Right (Semiconductor Topographies) Regulations 1989 | See Note | Paragraph (5) adds reference to semiconductor topographies |
| 348 | 216/ SI 1989/ 1100 The Design Right (Semiconductor Topographies) Regulations 1989 6 | Idem | |

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| 349 | 218 | Idem | |
| 350 | 219/ SI 1989/ 1100 The Design Right (Semiconductor Topographies) Regulations 1989 4 (3) | Idem | |
| 351 | 220 | See Note | Paragraph (5) adds provision for adapting paragraphs (1)(a) and (4)(b) to semiconductor topographies |
| 352 | SI 1989/ 1100 The Design Right (Semiconductor Topographies) Regulations 1989 7 | Idem | |
| 353 | SI 1989/ 1100 The Design Right (Semiconductor Topographies) Regulations 1989 8 | Idem | |
| 354 | 227 SI 1989/ 1100 The Design Right (Semiconductor Topographies) Regulations 1989 8 (2) | Idem | |
| 355 | SI 1989/ 1100 The Design Right (Semiconductor Topographies) Regulations 1989 8(5) | | |

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| 356 | | See Note | No corresponding provision in UK law |
| 357 | | See Note | No corresponding provision in UK law |
| 358 | SI 1989/ 1100 The Design Right (Semiconductor Topographies) Regulations 1989 8(4) | Idem | |
| 359 | 236 | Idem | |
| 360 | 237 SI 1989/ 1100 The Design Right (Semiconductor Topographies) Regulations 1989 9 | Idem | |
| 361 | 254 | See Note | Paragraph (3) adds definition of "advertisement" and omits reference to definitions in UK Trade Descriptions Act |
| 362 | | See Note | Corresponding provision not found in UK law |
| 363 | | See Note | Corresponding provision not found in UK law |
| 364 | | See Note | Corresponding provision not found in UK law |
| 365 | 240 | See Note | Paragraph (1) adds reference to powers of Minister |
| 366 | 241 | See Note | Paragraph (3) adds provision for use of designs by States |
| 367 | 242 | See Note | Paragraph (1) adds reference to States' use |
| 368 | 243 | Idem | |
| 369 | | | No corresponding provision in UK law |
| 370 | 222 | Idem | |
| 371 | 223 | Idem | |

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| 372 | 224 | Idem | |
| 373 | 225 | Idem | |
| 374 | 229 | Idem | |
| 375 | 233 | Idem | |
| 376 | 230 | See Note | Paragraph (3) substitutes "10 years" for "6 years" |
| 377 | 231 | See Note | Paragraph (8) adds: "The power in the Royal Court (Jersey) Law 1948 to make rules of court shall include the power to make rules for the purposes of this Article" |
| 378 | 238 | Idem | |
| 379 | 235 | Idem | |
| 380 | | See Note | No corresponding provision in UK law |
| 381 | | See Note | No corresponding provision in UK law |
| 382 | | See Note | No corresponding provision in UK law |
| 383 | | See Note | No corresponding provision in UK law |
| 384 | | See Note | No corresponding provision in UK law |
| 385 | 151 | Idem | No corresponding provision in UK law |
| 386 | | See Note | No corresponding provision in UK law |
| 387 | | See Note | No corresponding provision in UK law |
| 388 | | See Note | No corresponding provision in UK law |
| 389 | | See Note | No corresponding provision in UK law |
| 390 | | See Note | No corresponding provision in UK law |
| 391 | 171 | See Note | Paragraph (1)(a) adds: "and subject to any transitional provisions made in respect thereof under Article 408" Paragraph (1)(c) substitutes "the States Assembly" for "either House of Parliament" |

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| | | | Paragraph (1)(d) substitutes “Agent of the Impôts” for “the Crown” Paragraph (2) substitutes “statutory provision” for “enactment” |
| 392 | | See Note | No corresponding provision in UK law |
| 393 | 161/162 | Idem | |
| 394 | | See Note | No corresponding provision in UK law |
| 395 | 176 | See Note | Paragraphs (1) (b) and (c) added |
| 397 | | See Note | No corresponding provision in UK law |
| 398 | 109; 198(1);296ZC; 297A; 297B Copyright etc. Trade Marks (Offences and Enforcement) Act 2002 | Idem | |
| 399-411 | | See Note | No corresponding provisions in UK law |
| Schedule 1 | | | No corresponding provision in UK law |
| Schedule 2 | | | No corresponding provision in UK law |

**Economic Development's answers to the questions from Scrutiny on the
Draft Intellectual Property (Unregistered Rights) (Jersey) Law 201- (IPURL)**

Why is the Lending Right prevalent in UK law omitted within the proposed IPURL draft?

A lending right in the UK was first introduced as something separate from copyright law, namely as public lending right. This right gives rise to payments to authors based on the number of loans of their books from public libraries, but there are no constraints on what can be lent. The amount to be paid for each loan is decided by the Public Lending Right (PLR) Office within the framework of the law on public lending right. The payments are in effect funded from general taxation as a result of the decisions made by the UK Government on what resources are to be made available to the PLR Office. Thus libraries and library users are not required to pay anything for library lending, although libraries do collect data on the number of loans for each book, which is passed to the PLR Office so that they can allocate the correct amount to each author.

A public lending right is therefore different from a copyright lending right where anyone wishing to loan something would have to seek a licence from the copyright owner and agree what royalties are to be paid. A copyright lending right would require public libraries to negotiate licences before they can lend anything and make payments for loans directly to copyright owners, who could, of course, each seek different royalty levels, or even refuse to give a licence to permit lending at all. The copyright lending right that was introduced in the UK in 1996 was needed in order to comply with the EU rental and lending Directive (Directive 92/100/EEC), but this Directive did recognise the pre-existence of a public lending right in the UK and some other member States, and also the possibility that others might introduce a public lending right for some types of lending in the future. Article 5 of that Directive therefore permits a public lending right to be provided instead of a copyright lending right in those areas which give authors remuneration for lending under the public lending right. (Article 5 also permits certain other exceptions to or alternatives to a copyright lending right.) In the UK implementation of a copyright lending right there are, as a consequence, various exceptions to and qualifications to the copyright lending right that was introduced, most importantly by ensuring that lending of books by public libraries continues to come within the scope of provision on the public lending right and so this does not amount to lending as restricted by a copyright lending right.

A non-commercial lending right of any sort is not something that is required in order to comply with any international treaties and conventions relating to copyright, and Jersey does not have to comply with the terms of the EU rental and lending Directive. Also, Jersey does not currently have a public lending right. We therefore considered that the provision of a copyright lending right in the absence of a public lending right would give rise to problems for public library lending in Jersey that do not exist in the UK. Jersey Library in particular was concerned about the need to negotiate with copyright owners for lending, and the costs of royalties that might be sought, if there were a copyright lending right in IPURL. Of course, some copyright owners could even refuse permission for lending under any terms under a copyright lending right. Given that the omission of a lending right does not lead to any problems with possible membership of international conventions and treaties in the copyright area, we

therefore decided that there should be no copyright lending right in Jersey unless and until policy on a public lending right is developed and such a right is introduced.

Why are the exceptions to copyright in favour of use of copyright materials in research and for educational purposes not limited to research and educational use which is not conducted for profit?

The limitation in UK law that exceptions permitting certain uses of copyright works for the purposes of research and education only apply if these are activities for a non-commercial purposes was, we understand, introduced into the law in 2003 in order to comply with Article 5 of the EU Directive on copyright and related rights in the information society (Directive 2001/29/EC). Prior to this the exceptions in UK copyright law, which was enacted in 1988, were not so limited, and these exceptions had continued and in some respects expanded exception provision that had existed in earlier UK copyright laws, including the Copyright Act 1911, i.e. the current copyright law in Jersey. Thus, adding this limitation in IPURL would at least as far as the exception to copyright permitting fair dealing with a copyright work for the purposes of research make the exception narrower in scope than the current exception.

We believe that the changes made in this area in the UK in 2003 were not ones that the UK Government supported as necessary to remove activity that was damaging or unfair to copyright owners from the scope of the exceptions, nor ones needed in order to comply with international treaties and conventions relating to copyright. The UK already belonged to the Berne Convention for example, which limits the scope of exceptions to copyright that permit reproduction of copyright works using a formula, namely the three-step test, that has become a standard test limiting the scope of permitted exceptions in other treaties and conventions covering copyright. The changes to UK law were therefore, we believe, only made because of the need to comply with EU law. Jersey, of course, does not have such an obligation and so it is not necessary for IPURL to include this limitation in the research and educational exceptions to copyright.

Limiting what can currently be done under exception provision in copyright law that is in force in Jersey now could obviously be detrimental to those copying short extracts from books, journals and so on for the purposes of their research when it has a commercial purpose. Also of concern, though, is the fact that the meaning of the limitation has, we believe, caused much confusion in the UK as to what it actually restricts. The test in EU law is that the research or educational activity permitted under an exception must be for a non-commercial purpose. It is not, therefore, a test of the establishment where the activity takes place, but, rather, a test of the activity itself. Thus, for example, a person working at a college which is not run for profit may be hoping to commercialise some of the output from his or her research, but at the point of doing the research may not know whether or not this will materialise. Deciding whether the research has a commercial purpose is not straightforward in such circumstances. Moreover, it would not always be the individual wishing to enjoy an exception who has to decide what the answer to such questions would be. Limited copying under the exceptions often takes place in libraries where librarians may be asked to assist or advise on what is permitted. We therefore felt that introducing the limitation to the educational and research exceptions would also lead to much uncertainty about what is permitted and problems for those trying to advise people about what is permitted.

A number of articles within IPURL contain reference to a longer period of limitation (10 years as opposed to 6 years in UK law). What is the rationale behind the extension?

The normal limitation period in the UK for actions relating to tort is 6 years whereas in Jersey it is 10 years. The places where a time period of 6 years is provided in UK law have, we understand, been chosen to match this more general limitation period and so it makes sense to use the period of 10 years in Jersey.

Has consideration been given of incorporating into IPURL, provisions contained in the UK Digital Economy Act 2010, specifically relating to the use of technical measures?

The provisions in the UK Digital Economy Act 2010 relating to action that may be required of internet service providers in relation to their subscribers where copyright owners notify them of alleged illegal peer-to-peer (P2P) file-sharing was the result of policy developed in the last year, including a public consultation that took place over the summer of 2009. The drafting of IPURL was already well-advanced at that stage with changes being made to take account of comments received in a much earlier consultation in Jersey on the draft law. Provisions as in the Digital Economy Act 2010 were not being explored in the UK at the time of Jersey's consultation as at that time there was a desire in the UK for solutions to illegal P2P file-sharing, including by co-operation between internet service providers and copyright owners, to emerge as an industry agreement and not by a legislative route.

The provisions in the 2010 Act on P2P file-sharing have not, therefore, been subject to a public consultation in Jersey. Given in particular the clear level of interest in the provision in the UK, and the many concerns expressed, including during the Parliamentary debates in the UK, we do not, as a result, consider that it would be appropriate to incorporate anything in IPURL. Moreover, the UK provision amends the UK Communications Act 2003 rather than UK copyright law, so that IPURL is not clearly the appropriate legislative vehicle. In addition, the provisions in the 2010 Act are only enabling. The detail of how the provisions might work in practice, including on the sensitive issue of internet service providers applying technical measures, such as those that block or limit internet access for their subscribers who are alleged repeat infringers of copyright, are only now being developed in the UK, with further consultations currently taking place on some of the issues. We therefore intend to monitor how those consultations and the detail of the provision develops in the UK before deciding whether or not to develop and consult on similar provision in Jersey.

Indeed, part of that monitoring will need to involve an assessment of whether or not illegal P2P file sharing remains the biggest concern or whether other illegal uses of copyright material, such as sites that offer illegal streaming services, are of more concern. IPURL does, though, in Schedule 1 already include some provision on the liability of internet service providers for copyright infringements in their services, and what their role must be in order to deal with allegations of infringement and actual infringements of copyright. This includes when the service is provision of an electronic link, including as a result of use of a search engine that has been provided, to material that infringes copyright. Essentially, a service provider only has limited liability for infringement of copyright in the material linked to if he or she does not have actual knowledge of the infringement, and upon obtaining such knowledge acts promptly to remove the link.

The provision in Schedule 1 has been developed in Jersey in the light of consultation with interested parties and is, we believe, in some respects more helpful to copyright owners than provision in the UK and in other respects similar to provision in the UK. We are aware that the Digital Economy Act 2010 also includes a provision that would permit regulations to be made about the availability of injunctions against service providers to prevent them linking to locations where there is copyright infringement. As well as the provision on service providers who make electronic links available as explained above, Schedule 1 of IPURL does also include some provision on the possibility of injunctions against service providers where they have actual knowledge of another person using their service to infringe copyright. We shall also keep under review whether this provision, as well as the provision on electronic links, is adequate, including in the light of any regulations made in the UK on injunctions as permitted by the 2010 Act. There is, moreover, provision in IPURL which permits Schedule 1 to be amended by Regulations in the light of experience and any changes to the most damaging types of infringement of copyright.

What is the plan for internationalising Jersey's new copyright regime based on IPURL: what are the objectives, what are the means, and what are the timelines?

IPURL has been drafted with a view to ensuring it is compliant with the main international conventions and treaties in the copyright area, including the Berne Convention, the Rome Convention and the two WIPO Treaties of 1996. We have also tried to ensure compliance with the provision on copyright in the WTO TRIPS Agreement. We have been liaising with the UK Intellectual Property Office to confirm that there is such compliance and have not so far been informed of any problems. The UK is a member of all of these treaties and conventions so we therefore plan to formally ask the UK for their membership of the main copyright treaties and conventions to be extended to Jersey. (This will not include the TRIPS Agreement at this stage as this also covers registered intellectual property rights, that is rights that are not covered by IPURL.) Although an extension probably cannot be put into effect until IPURL has come into force in Jersey, we currently intend to formally request the extension of convention and treaty membership at the same time as we submit IPURL for Privy Council approval following approval by the States Assembly. We currently hope that membership can therefore come into effect in the first half of 2011.

Although treaty membership is important to demonstrate that Jersey will have a world-class law in the copyright and related areas, as well as to ensure that copyright material having its origin in Jersey is fully protected in all other convention country members, we also appreciate the need to explore the opportunities for encouraging new economic activity in Jersey that builds on the existence of the new law. That is why we have already established an intellectual property project that is working with stakeholders both within and outside the Island to identify what types of businesses might find Jersey an attractive jurisdiction from which to operate, including by considering what policy areas, as well as intellectual property, are important. For the copyright-based creative industries which increasingly operate in the digital and online world, the area of e-commerce and how this might expand in the Island is obviously very relevant to this project. This project will continue to be taken forward as the legislation in IPURL is put in place. We hope that by the time the new law is in force next year we are better placed to encourage new business activity.

Are there plans to conduct an Economic Impact Assessment in relation to licensing schemes and the Licensing to ensure that what is proposed is consistent with the scale of actual need?

The provision on licensing in IPURL is essentially the same as that in the UK in that it does provide some regulation of collective licensing in particular. Collective licensing is where a number, and often nearly all, of the copyright owners for a particular type of copyright work choose to license particular uses of those works through a licensing body that represents their interests collectively. The licences offered are then often blanket licences that permit a licensee to use any of the copyright works without having to agree individual licences for each work. The administrative efficiencies of collective licensing can therefore benefit both copyright owners and users of copyright material. However, licensing bodies can in effect have a monopoly in a particular area. For example, certain uses of music have for a long time been collectively licensed in both the UK and Jersey, and indeed, much of the world. If, say, a person wants to play music in public, they do not, therefore, have a choice about who to ask for a licence as all of the use comes under a collective licence. IPURL therefore copies UK law by making provision for independent adjudication on the terms and conditions of licensing offered by collective licensing bodies which a user can access if they believe that those terms and conditions are unreasonable.

We recognise that in practice collective licensing in Jersey is likely to be operated by licensing bodies that operate in the UK, and, indeed, the licensing offered by licensing bodies in Jersey may simply be subject to the same terms and conditions as that offered in the UK. So, given that many more people in the UK than Jersey are likely to be affected by any terms and conditions of licensing that is thought to be unreasonable, a challenge is probably more likely in the UK than Jersey with any adjustments to the licensing resulting from the independent adjudication then also being made in Jersey. However, it could still be unfair to licensees and potential licensees in Jersey if IPURL does not provide any mechanism for challenging the terms and conditions of collective licensing if they want to, and, indeed, UK collecting societies could even try and impose more unreasonable terms on licensing in Jersey compared to the UK if they know that their activity does not give rise to a licensee's right to seek independent adjudication. It would therefore, in our view, be wrong to omit the regulation of collective licensing that is in IPURL.

We have only been able to assess the likely use of the provisions in IPURL permitting access to independent adjudication of collective licensing by reference to what happens elsewhere. We know that in the UK, the body tasked with this role, namely the Copyright Tribunal, hears very few cases, and some years there are no cases. Moreover, a body equivalent to the Copyright Tribunal was created in the Isle of Man when copyright law was updated there in 1991 and we have been told that it has never heard a case. Our current assessment of the impact in Jersey of the provision in IPURL regulating collective licensing is that it is very likely to lead to no cases being referred to the licensing authority, the body created by IPURL to carry out the tasks in Jersey equivalent to those carried out by the Copyright Tribunal in the UK. However, in order to ensure that any costs of the licensing authority can remain proportionate to the actual need, we have made very flexible provision on how the licensing authority will be created. The Minister may by Order appoint an individual or person, or establish a body, to be the licensing authority, and in the absence of any Order being made, the Minister is the licensing authority, with the safeguard that a case in which the States have an interest, and so one that the Minister cannot fairly hear, is referred to the Royal Court. This mechanism therefore permits the Minister to only make an Order if

and when there is more clearly a need for the licensing authority to actually adjudicate on collective licensing. If, as we currently assume will be the case, there are no cases, then the Minister can simply remain as the licensing authority and so there are no significant costs as a result of the provision in IPURL. Indeed, the Minister can even remain as the licensing authority if there are cases and provision in IPURL permits advisers to the licensing authority to be appointed, which may be particularly useful if the licensing authority is the Minister. Moreover, it is also possible for the Minister to prescribe a fee in respect of any applications or references to the licensing authority and the level of any fee could be set so as to cover the costs of running the licensing authority. We therefore believe that the provision on licensing, particularly collective licensing, is proportionate and flexible enough to match the actual need.

Follow up report on IPURL prepared for the Economic Affairs Scrutiny Panel

There follow brief comments on the responses received from the Economic Development Department to the questions raised upon receipt of the initial Report

1. Why is the Lending Right prevalent in UK law omitted within the proposed IPURL draft?

EU law governing the relationship between the copyright lending right and the public lending right is contained in Directive 2006/115/EC of December 12th 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version).

Preamble (14) of the Directive provides as follows:

(14) It is also necessary to protect the rights at least of authors as regards public lending by providing for specific arrangements. However, any measures taken by way of derogation from the exclusive public lending right should comply in particular with Article 12 of the Treaty .

[Article 12 of the Treaty outlaws discrimination based on nationality]

The current provision (Article 6) dealing with the treatment of the public lending right provides as follows:

Article 6

Derogation from the exclusive public lending right

1. Member States may derogate from the exclusive right provided for in Article 1 in respect of public lending, provided that at least authors obtain a remuneration for such lending. Member States shall be free to determine this remuneration taking account of their cultural promotion objectives.
2. Where Member States do not apply the exclusive lending right provided for in Article 1 as regards phonograms, films and computer programs, they shall introduce, at least for authors, a remuneration.
3. Member States may exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 1 and 2.

The response of the Economic Development Department (“EDD”) is substantively correct in its analysis. It also correctly indicates that there is no requirement to introduce either a copyright lending right or a public lending right to comply with the relevant international treaties.

On the other hand, the standard within the European Union does envisage a requirement to remunerate at least authors for the lending of their works, either via a copyright lending right to a public lending right. The EDD response records the concern of the Jersey Library that the introduction of a copyright lending right could result in it having to negotiate for the right to lend works of certain authors.

The EED response concludes:

“.....we therefore decided that there should be no copyright lending right in Jersey unless and until policy on a public lending right is developed and such a right is introduced”

It is not entirely clear what this conclusion means. If it suggests that a decision on whether to introduce a copyright lending right should be deferred until a position has been taken on introducing a public lending right, that would seem logical and consistent with the position in the UK. The basis of evaluating policy with regard to a possible public lending right is beyond the scope of this report.

2. Why are the exceptions to copyright in favour of use of copyright materials in research and for educational purposes not limited to research and educational use which is not conducted for profit?

The EDD correctly states the history of the current provision in UK law.

On August 7 2002 the Copyright Directorate of the UK Patent Office issued a Consultation Paper on Implementation of the [Information Society] Directive in the UK. It subsequently published a paper of Analysis of Responses and Government Conclusions.

Both papers dealt with Article 5.3 (a) of the Directive; the relevant extract from the follow up paper reads as follows:

Exception for research and private study (s.29 of the CDPA)

The consultation paper proposed to limit the s.29 exception permitting ‘fair dealing’ for research purposes to cases where research is for a non-commercial purpose, and this position is unchanged. Many user organisations expressed strong concerns about the meaning and implications of this limitation, but its addition is necessary in order to comply with Article 5.3(a) of the Directive.

EDD is correct in asserting that the requirement in the EU Directive is not one that is found in the relevant international law. As it points out, rightsholders are protected by the so-called “three step test” to which UK copyright law has been subject since long before the changes were made to the exception in question. The “pre-directive” regime (i.e. not restricting the fair use exception to “non-commercial purposes” was never challenged on that basis.

3. A number of articles within IPURL contain reference to a longer period of limitation (10 years as opposed to 6 years in UK law). What is the rationale behind the extension?

The response from the EDD appears logical from the point of view of Jersey law. At the same time the position taken does not compromise the compliance of IPURL with any requirement of international law.

4. Has consideration been given of incorporating into IPURL, provisions contained in the UK Digital Economy Act 2010, specifically relating to the use of technical measures?

The passage of the Digital Economy Act 2010 of the UK, and in particular its provisions dealing with the problem of online copyright infringement, has given rise to considerable controversy for a number of reasons – not the least because of the way it was passed. It was intended in part to provide for measures to deal with the growing problem of online infringement in way that was consistent with the interests of, on the one hand, the rightsholders (particularly in the music industry) and on the other the ISPs. The stand off between these 2 sets of interests has existed since the internet became a primary medium for consumer exchange of data.

The EDD analysis is again accurate and their overall position can be summed up as follows:

- The Digital Economy Act emerged from extensive public consultation in the UK; no such consultation has occurred in Jersey;
- The provisions in Schedule 1 of IPURL are based on consultation in Jersey and is in various respects more helpful to rightsholders than is the position under UK copyright law (the Digital Economy Act places the provisions relating to online infringement in the UK Communications Act)
- Various things have to happen under the Digital Economy Act – notably the creation of codes by Ofcom and further consultation in relation thereto - before any conclusions can be drawn as to whether the new law can be considered effective in addressing the online piracy issue.
- While developments in relation the Act should be closely monitored in Jersey, it is premature to launch a consultation on the same basis in Jersey. In any event powers have been provided within IPURL to amend Schedule 1 as necessary should the need arise or should new data emerge from the UK.

This seems a sensible and measured approach. The ideas underlying the various measures underlying both the Initial Obligations Code and the Technical Obligations Code in the UK Act are not in themselves complex but how they are defined, managed and implemented raises significant issues. It seems logical that before Jersey embarks on a similar course, it has the opportunity to consider progress in the UK.

5. What is the plan for internationalising Jersey's new copyright regime based on IPURL: what are the objectives, what are the means, and what are the timelines?

The comment in response to the EED's response is very simple one: it has a plan and it is the logical one.

It has identified the key treaties:

- The Berne Convention
- The Rome Convention
- The WIPO Copyright Treaty
- The WIPO Performances and Phonograms Treaty

It has also tried to ensure compliance with the WTO TRIPs provisions. It should be noted that in terms of further copyright treaties there seems little likelihood of any new provisions emerging at the international level in the near to mid term.

In terms of international trade standards reference has to be made to the current negotiations concerning ACTA.

The **Anti-Counterfeiting Trade Agreement (ACTA)** is a proposed plurilateral agreement for the purpose of establishing international standards on intellectual property rights enforcement. ACTA would establish a new international legal framework that countries can join on a voluntary basis and would create its own governing body outside existing international institutions such as the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO) or the United Nations. Negotiating countries have described it as a response "to the increase in global trade of counterfeit goods and pirated copyright protected works." The scope of ACTA includes counterfeit goods, generic medicines and copyright infringement on the internet.

While the ACTA agreement is still under negotiation there is every indication the provisions in IPURL will fully comply with the requirements as they finally emerge.

The liaison that is being maintained with the UK Intellectual Property Office regarding compliance with international standards is a logical proposition.

In short, the plan for internationalization and its current implementation appears entirely fit for purpose and it is notable that the focus is not merely ensuring compliance with international standards in abstract: it is to ensure compliance in a way that enhances the position of Jersey as an international basis for the development of intellectual property.

6. Are there plans to conduct an Economic Impact Assessment in relation to licensing schemes and the Licensing to ensure that what is proposed is consistent with the scale of actual need?

This is a difficult area. As the EDD correctly points out, the existence of an adjudication mechanism is an important counter to the possibility of collecting licensing agencies abusing its monopoly position in certain areas and instances of licensing activity. On the other hand, many episodes of activity by the UK Copyright Tribunal have involved extremely high expenditure by the parties while often achieving little in terms of constructive regulation.

The approach taken in IPURL, as described by the EDD in its response appears to achieve the correct balance: providing a mechanism to protect against abuse but subjecting its deployment to Ministerial decision and, if needs be direction as to fees and costs. This also provides for the likelihood that the need for such adjudication may rarely if ever arise in Jersey.