

**DRAFT COPYRIGHT (JERSEY) LAW 200-**

---

**Lodged au Greffe on 10th September 2002  
by the Industries Committee**

---



**STATES OF JERSEY**

**STATES GREFFE**

150

2002

P.160

Price code: H

## **European Convention on Human Rights**

The President of the Industries Committee has made the following statement -

In the view of the Industries Committee the provisions of the Draft Copyright (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy M.F. Dubras of St. Lawrence**

## REPORT

### Background

In 1992, the Policy and Resources Committee agreed that Jersey should, through the U.K., become a party to the General Agreement on Tariffs and Trade (GATT) in respect of trade in services. The World Trade Organization (WTO), the successor to GATT, came into being in 1995. To be able to comply fully with the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) requirements of the WTO, it is necessary to modernise and expand the law on intellectual property in Jersey.

In the area of copyright, particularly, there is an urgent need for new legislation, quite apart from TRIPS considerations. Copyright law is governed presently by two very old U.K. Acts of Parliament, the Musical Copyright Act 1906 and the Copyright Act 1911. Both these Acts are badly out of date. They pre-date the invention of much modern technology relating to reproduction of works, communications, broadcasting and computing. The absence of modern copyright laws is actually a discouragement to important new business opportunities for the Island in the field of e-business and information and communications technology because such businesses might well prefer to operate from jurisdictions which offer better protection in intellectual property matters.

This draft Law, the Copyright (Jersey) Law 200- is the first part of a larger exercise which will modernise intellectual property law in the Island to bring it into line with the law in other European countries and enable the Island to ask for the extension to it of the U.K.'s accession to the TRIPS agreement.

Therefore, as well as the draft Copyright (Jersey) Law, the following draft Laws are nearing completion and will be put to the States for approval in due course -

- (a) Design Right (Jersey) Law 200-; and
- (b) Performers Protection (Jersey) Law 200-.

All three drafts are based on the U.K. legislation. However, in the U.K., one Act covers the three aspects of the proposed Jersey legislation, which has been prepared in this way on the advice of the Law Officers as being more appropriate to Jersey.

The draft Design Right and Performers Protection legislation will be brought to the States during the autumn of 2002.

The above legislation relates to unregistered rights. However, compliance with the TRIPS requirements covers registered rights as well. On trade marks, this was achieved by the enactment of the Trade Marks (Jersey) Law 2000, but there remains a need to make some changes to Jersey's legislation on patents and registered designs. The Industries Committee is about to commence work on updating this legislation with a view to bringing the draft laws to the States in the Spring of 2003.

### A brief history of copyright law

Copyright is the right of the author, composer, artist or creator of an original work to prevent another from copying it. The right attaches to or derives from work itself, not an idea.

It was not until the 1709 Statute of Anne, which passed into law on 10th April 1710, that copyright in books and other writings gained protection of an Act of Parliament. Prior to this, disputes over the rights to the publishing of books could be enforced by common law.

The scholars of Ancient Greece and the Roman Empire were the first to be concerned about being recognised as the authors of their works, but they did not have any economic rights. It was not until the invention of printing in the fifteenth century that a form of copyright protection was devised. Until then, the copying of a manuscript was a painstakingly slow process done mainly by monks. It was limited to copying religious works for orders and the royal courts of Europe. The majority of people were illiterate; only privileged members of society had access to these manuscripts.

### Licensing Act 1662

The ability to print books easily and cheaply raised the issue of piracy. As the number of printers increased in England, the King exercised the royal prerogative to regulate the book trade and protect printers against piracy. This was the first of many decrees to control what was being printed.

It was the Licensing Act of 1662 which established a register of licensed books, along with the requirement to deposit a copy

of the book to be licensed. Deposit was administered by the Stationers' Company who were given powers to seize books suspected of containing matters hostile to the Church or Government. By 1681 the Licensing Act had been repealed and the Stationers' Company had passed a by-law that established rights of ownership for books registered to a number of its members so as to continue regulating the printing trade themselves.

### **Statute of Anne**

The passing of the Statute of Anne, which was the first Copyright Act in the world to deal with this issue, introduced two new concepts - an author being the owner of copyright and the principle of a fixed term of protection for published works. The Act also brought about the depositing of nine copies of a book to certain libraries throughout the country. Subsequent Copyright Acts introduced copyright protection for other works. The term of protection was also extended.

### **International Copyright Act 1886 and the Berne Convention**

In 1875 a Royal Commission suggested that the present Acts should be improved and codified and strongly advised the Government to enter into a bilateral copyright agreement with America to provide reciprocal protection of British and U.S. authors. After preparatory work had been carried out for the forthcoming Conference of Powers (resulting in the framing of the Berne Convention for the Protection of Literary and Artistic Works), the International Copyright Act of 1886 was passed. The 1886 Act abolished the requirement to register foreign works and introduced an exclusive right to import or produce translations. British copyright law was extended to works produced in British possessions. The U.K. ratified the Berne Convention with effect from 5th December 1887.

### **Musical Copyright Act 1906**

This Act was made applicable to Jersey in 1908. It made it a criminal offence to print, sell, possess, etc., pirated copies of musical works which were covered by copyright. Statutory copyright in musical works was established by two 19th Century English Acts, which were consolidated in the Copyright Act 1911.

### **Copyright Act 1911**

On 1st July 1912, the Copyright Act 1911 came into force. It brought provisions on copyright into one Act for the first time by revising and repealing most of the earlier Acts and abrogating any remaining common law copyright or similar right in published or unpublished literary, dramatic, musical or artistic works. Amendments included the introduction of a further extension of the term of protection, together with a new arrangement for calculating the term of copyright. Records, perforated rolls, sound recordings and works of architecture also gained protection. The Act also abolished the requirement to register copyright with Stationers Hall - a fundamental principle of the Berne Convention. It was made applicable to Jersey by Order in Council, in 1913.

### **Copyright Act 1956**

The Copyright Act 1956 came into force on 1st June 1957. It took into account further amendments to the Berne Convention and the U.K.'s accession to the Universal Copyright Convention, administered by United Nations Educational, Scientific and Cultural Organization (UNESCO). Other amendments included new technological advances, for example, films and broadcasts, which were protected in their own right for the first time by copyright. The Performing Right Tribunal, the predecessor of the current Copyright Tribunal was also established. This Act was never extended to Jersey but it preserved in force the 1911 Act in so far as it applied to the Island.

Several amendments were made to the 1956 Act prior to the introduction of the current legislation, which is in Part 1 of the Copyright, Designs and Patents Act 1988.

### **Copyright Designs and Patents Act 1988**

Part 1 of the 1988 Act, which came into force on 1st August 1989, repealed the 1956 Act and provided another major overhaul and updating of copyright law. It also made the first proper statutory recognition in U.K. law of a copyright holder's so called moral rights, such as the right to be identified as the author of work and to object to distortions of work. But the process has continued since then with a number of amendments, many implementing various European Directives, for instance in relation to computer programs and on the recognition of database rights. It is an ongoing process.

### **The drafting and consultation process leading to the new draft Copyright (Jersey) Law**

The Industries Committee set up an Intellectual Property Rights Steering Group, chaired by Deputy Philip Ozouf, comprising

- Richard Whitehead, Principal Legal Adviser, Law Officers' Department
- Advocate Peter Harris
- Wendy Benjamin, English Solicitor
- Matthew Robins, Chartered Institute of Marketing
- Peter Griffiths, IS/IT Strategy Adviser, Policy and Resources Department<sup>[1]</sup>
- Bevan Anthony, Director - Strategic Development, Department for Economic and Commercial Development.

The aim of the Group was to co-ordinate the consultative process, to discuss the views and comments received and to consider what detailed changes, if any, should be made to the draft Laws. The Group was needed because of the recognised lack of specialised knowledge of intellectual property law in the public sector. In this context, the contribution made by Advocate Harris, Mrs. Benjamin and Mr. Robins has proved to be particularly valuable.

The draft Laws were published on the internet and hard copies were made available at the Greffe Bookshop and the Public Library. Letters were sent to specific organisations to invite comment, including the Jersey Law Society, Jersey Heritage Trust, Societé Jersiaise, Jersey Arts Trust, Association of Jersey Architects, C.I. Group of Professional Engineers, Channel Television, BBC Radio Jersey, Jersey Evening Post, Channel 103, the Human Resources Committee and the Education Committee.

In addition to the public consultation, the U.K. Patent Office has been consulted throughout the process. Specific advice was sought on the difficult transitional arrangements in moving from a 1911 Law into modern legislation which would be TRIPS compliant. The Committee is most grateful for the assistance provided by the Patent Office.

The Industries Committee would formally like to record its thanks to the members of the Steering Group, who gave freely a significant commitment in terms of time and expertise to ensure that this extremely complex draft Law has been progressed as swiftly as possible.

### **The purpose of the Law**

This is clearly a highly complex and important piece of legislation; one which is vital to Jersey's reputation as a major world player in the e-business and associated fields. A great deal of legal expertise has contributed to this major step forward in bringing Jersey's intellectual property legislation up to date.

The Explanatory Note produced by the Law Draftsman to accompany the draft Law provides a detailed explanation of the effect of each of the Articles. It is not proposed to cover this ground again in this report. Suffice it to say that the U.K. Patents Office is satisfied that the draft Law will meet the requirements of the TRIPS Agreement in respect of copyright legislation. The Industries Committee will bring a draft Design Right Law and Performers' Protection Law to the States during the coming autumn and a draft Patents Law and Registered Designs Law in 2003, thus completing the modernisation of Jersey's intellectual property legislation.

The intellectual property field is fast-moving and it will be important for Jersey to keep in step with global developments in the future. The modernisation of Jersey's intellectual property legislation has, on this occasion, been an extremely difficult and time-consuming exercise because our legislation has been allowed to fall into serious disrepair. However, once the new legislation is in place, it will be a straightforward exercise to incorporate amendments to cater for new developments.

### **Statement of financial and manpower implications**

There are no financial or manpower implications arising from the adoption of the draft Law by the States. There will be a Copyright Tribunal, but, it is anticipated that this will meet infrequently and that the financial costs and required manpower will be met from existing resources.

### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 6th September 2002 the Industries Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Industries Committee the provisions of the Draft Copyright (Jersey) Law 200- are compatible with the Convention Rights.

## **Explanatory Note**

*Part 1* is introductory.

*Article 1* is an interpretation provision.

*Part 2* makes provision for the subsistence, ownership and duration of copyright.

*Article 2* defines copyright.

*Article 3* allocates rights in copyright works.

*Article 4* provides that copyright may not exist in literary, dramatic or musical works until they are recorded, whether in writing or otherwise.

*Article 5* defines databases.

*Article 6* defines definitions relating to artistic works.

*Article 7* defines sound recording and provides that copyright may not exist in a sound recording if it is a recording of a previous sound recording.

*Article 8* defines film and makes similar provisions in respect of them as *Article 7* does in sound recordings.

*Article 9* defines broadcast and makes provisions in relation to encrypted transmissions and the place of origin of broadcasts.

*Article 10* defines provisions relating to the place of origin of satellite broadcasts.

*Article 11* defines cable programmes, and specifies circumstances where copyright may not exist in sound programmes.

*Article 12* defines “published editions” and specifies circumstances where copyright may not exist in the typographical arrangement of such editions.

*Article 13* defines the authorship of work.

*Article 14* defines joint authorship of work.

*Article 15* specifies who is to be regarded as the first owner of copyright in a work.

*Article 16* specifies the periods after which copyright in literary, dramatic, musical or artistic works will expire.

*Article 17* specifies the periods after which copyright in sound recordings will expire.

*Article 18* specifies the periods after which copyright in films will expire.

*Article 19* specifies the periods after which copyright in broadcasts and cable programmes will expire.

*Article 20* specifies the periods after which copyright in the typographical arrangement of published editions will expire.

*Article 21* specifies the method of determining the country of origin of a work.

*Part 3* defines the rights of a copyright owner.

*Article 22* describes the acts which only the owner of the copyright in a work can do.

*Article 23* provides that unauthorized copying of work will be an infringement of copyright.

*Article 24* provides that issuing unauthorized copies of a work will be an infringement of copyright.

*Article 25* provides that unauthorized renting or lending work to the public will be an infringement of copyright.

*Article 26* provides that unauthorized performances, shows or plays of a work in public will be an infringement of copyright.

*Article 27* provides that the unauthorized inclusion of various types of works in a cable programme service will be an infringement of copyright.

*Article 28* makes provision whereby the unauthorized adaptation of a work, or actions ancillary thereto, will be an infringement of copyright.

*Article 29* makes the unauthorized import of an infringing copy of a work an infringement of copyright.

*Article 30* makes the knowing possession or dealing in unauthorized copies an infringement of copyright.

*Article 31* provides that the making, importation, possession or dealing with an article for making unauthorized copies of a work will be an infringement of the copyright of that work.

*Article 32* makes allowing premises to be used for the unauthorized performance of a work an infringement of the copyright of that work.

*Article 33* describes circumstances where persons will be held to be infringing the copyright in a work when it is publicly displayed, etc.

*Article 34* defines “infringing copy”.

*Part 4* describes the acts that are permitted in respect of copyright works.

*Article 35* is an introduction to Part 4.

*Article 36* sets out the circumstances where acts in relation to a work for the purpose of research and private study are not infringements of copyright.

*Article 37* sets out the circumstances when acts in relation to a work for the purposes of criticism, review or news reporting are not infringements of copyright.

*Article 38* excludes from the definition of infringement of copyright the incidental inclusion of copyright material.

*Article 39* provides that the making of a single specially enhanced copy of a copyright work by a person whose sight is impaired should not be an infringement of copyright.

*Article 40* enables an approved body to make specially enhanced copies of copyright work for persons whose sight is impaired without infringing copyright.

*Article 41* provides that the making of intermediate copies as part of a process authorized under Article 40 should not be an infringement of copyright, subject to certain conditions.

*Article 42* reverses the effect of Article 40 if the making of specially enhanced copies of the work has been authorized under a licensing scheme.

*Article 43* enables the Committee by Order to regulate the making of specially enhanced copies.

*Article 44* contains definitions and supplementary provisions that applicable to Articles 39 to 43.

*Article 45* provides that copies made for the purpose of instruction or examination shall not infringe the copyright of a work.

*Article 46* makes provision in relation to the inclusion of extracts of copyright works in anthologies made for educational use.

*Article 47* provides that performances, playing or showing of copyright work in the activities of an educational establishment shall not infringe copyright in the work.

*Article 48* provides that recording a copyright work by an educational establishment for educational purposes shall not infringe copyright in that work.



*Article 49* provides that, within limits, copying by educational establishments of passages from published copyright works shall not infringe copyright in those works.

*Article 50* provides that copyright in a work will not be infringed if an educational establishment lends copies of the work.

*Article 51* is an introduction to the provisions of the Law relating to the activities of libraries and archives in relation to copyright works.

*Article 52* enables a librarian of an authorized library to supply a copy of an article in a periodical without infringing copyright if certain conditions are complied with.

*Article 53* enables a librarian of an authorized library to supply a copy of a published edition of a literary, dramatic or musical work without infringing copyright if certain conditions are complied with.

*Article 54* provides provisions which shall be included in Orders under Article 51 and others which may be included, relating to the number of copies authorized by Article 52 and 53.

*Article 55* enables a librarian of an authorized library to supply a copy of copyright material authorized under Articles 52 and 53 to a librarian of another authorized library.

*Article 56* enables a librarian or archivist of a prescribed library or archive to make a copy of copyright material, subject to conditions, and to preserve the original or to replace a lost, damaged or destroyed copy.

*Article 57* enables a librarian or archivist of a prescribed library or archive to copy unpublished material without infringing copyright, subject to conditions.

*Article 58* authorizes the copying, subject to conditions, of a culturally or historically important article where the making of such a copy is an essential pre-requisite to the export of the original.

*Article 59* provides that papers purposed for the States or judicial proceedings which contain copies or extracts of copyright work will not infringe copyright.

*Article 60* makes similar provisions as Article 59, but in respect of committees of inquiry and statutory inquiries.

*Article 61* provides that where material that is statutorily required to be open to public inspection, neither its display nor the making of copies will be an infringement of copyright.

*Article 62* enables the Crown or the States to deal with copyright documents sent to them in the course of business without infringing copyright.

*Article 63* provides protection against copyright infringement for the Public Registry, the Jersey Museum and the Superintendent Registrar.

*Article 64* provides that copyright will not be infringed by acts done under statutory authority.

*Article 65* enables back-up copies of computer programs to be made without infringing copyright.

*Article 66* enables computer programs to be re-written so they may be used on a different computer without infringing copyright.

*Article 67* specifies other acts which may be done without infringing copyright.

*Article 68* specifies acts in relation to databases which may be performed without infringing copyright.

*Article 69* specifies acts in relation to design documents and models which may be done without infringing copyright.

*Article 70* makes provision for the exploitation of designs which are derived from copyright artistic works.

*Article 71* provides that acts performed under the authority of the Registered Designs (Jersey) Law 1957 will, subject to conditions, not infringe copyright.

*Article 72* provides that the use of copyright typeface in the ordinary course of printing will not infringe copyright.

*Article 73* makes provision for the duration of copyright in an artistic work consisting of the design of a typeface.

*Article 74* regulates the transfer of copies of copyright work in electronic form.

*Article 75* makes various provisions to apply where a work is pseudonymous, anonymous, where the author may be presumed to be dead, or where copyright may be presumed to have expired.

*Article 76* provides for the making of notes, and reporting, of spoken words which are copyright.

*Article 77* covers the reading or recitation of copyright written works in public.

*Article 78* provides for the publication of abstracts of scientific or technical articles in periodicals.

*Article 79* regulates the copyright in recordings of folk-songs.

*Article 80* regulates the publication of images depicting copyright buildings and three-dimensional art.

*Article 81* makes provisions for the reproduction of artistic works in publicity material prepared and issued in relation to the sale of that work.

*Article 82* makes provisions for an artist to create artistic works after creating an earlier work to which he no longer owns the copyright.

*Article 83* makes provision for the repair and reconstruction of buildings without infringing copyright.

*Article 84* enables Orders to be made permitting the lending to the public of copyright works.

*Article 85* provides for certain acts to be permitted in relation to films on the assumption that copyright has expired.

*Article 86* enables clubs and societies to play sound recordings without infringing copyright.

*Article 87* authorizes an owner or licensee of copyright to perform various ancillary acts when broadcasting the copyright work.

*Article 88* makes provision for the copying of material for the purpose of broadcasting.

*Article 89* authorizes the recording of copyright material for domestic use.

*Article 90* authorizes the making of a photograph of a copyright work for domestic use.

*Article 91* enables the showing or playing in public of broadcast copyright material in places where no charge is made to the public for admission.

*Article 92* enables the re-transmission by cable of a broadcast copyright work without infringement of the copyright.

*Article 93* enables the provision of sub-titled copies of broadcast programmes for the hard of hearing without infringement of copyright.

*Article 94* enables recordings to be made of broadcast programmes for archive work.

*Article 95* makes provision for adaptations, as distinct from copying, of copyright works.

*Article 96* establishes a right to be identified as the author or director of a work, as a right distinct from copyright.

*Part 5* defines and establishes 'moral rights', as distinct from copyright, which are to exist in relation to works.

*Article 97* requires the assertion of an Article 96 right before it can be infringed.

*Article 98* sets out exceptions to Article 96 rights.

*Article 99* establishes a right for authors and directors of works not to have his work subjected to derogatory treatment.

*Article 100* sets out exceptions to Article 99 rights.

*Article 101* qualifies Article 99 rights in certain cases.

*Article 102* provides that the possession of an article which has been subject to treatment in contravention of Article 99 shall infringe Article 99 rights.

*Article 103* establishes a right in certain circumstances not to have the authorship or directorship of works falsely attributed to him.

*Article 104* establishes the right of a person who for domestic purposes takes a photograph, or makes a film, not to have the photograph or film published or broadcast.

*Article 105* makes provision for the duration of Article 96, 99 and 104 rights.

*Article 106* provides for the waiver of Part 5 rights.

*Article 107* makes provision for the application of Part 5 rights to works which have joint authorship or directorship.

*Article 108* makes provision for Part 5 rights to apply to parts of works.

*Part 6* regulates the manner in which rights in copyright works may be dealt with.

*Article 109* provides for copyright to exist and be dealt with as moveable property.

*Article 110* regulates dealings with future copyright.

*Article 111* provides for exclusive licences in relation to copyright.

*Article 112* provides that when an unpublished work is bequeathed, copyright shall follow the bequest unless a contrary intention is expressed in the will.

*Article 113* provides that where an author agrees with a producer for the filming of the author's work, the rental right in the film will vest in the producer unless contrary provision is made in the agreement.

*Article 114* ensures that when an author transfers his rental rights in a sound recording or film, he retains the right to remuneration for the rental, and makes ancillary provisions.

*Article 115* provides an appeal system to establish what remuneration is due under Article 114 in default of agreement.

*Article 116* provides that Part 5 rights are not assignable.

*Article 117* regulates the transmission of Part 5 rights on death.

*Part 7* makes provision for civil and criminal remedies for infringement of copyright and of the Law.

*Article 118* provides that infringements of copyright are to be actionable by the copyright owner.

*Article 119* regulates damages that may be awarded to the copyright owner.

*Article 120* authorizes orders for delivery up to the copyright owner of infringing copies and articles designed to make them.

*Article 121* grants and regulates the right to seize infringing copies of copyright works.

*Article 122* defines the rights of an exclusive licensee of copyright.

*Article 123* regulates the rights of copyright owners and exclusive licensees when they run together.

*Article 124* regulates Part 5 rights.

*Article 125* defines the presumptions to be made in proceedings in respect of literary, dramatic, musical or artistic rights.

*Article 126* sets out presumptions to be made in proceedings brought by virtue of Part 7.

*Article 127* sets out presumptions to be made in proceedings brought by virtue of Part 7 in relation to Crown or States copyright.

*Article 128* makes provision for criminal liability.

*Article 129* provides power for the court, in criminal proceedings brought under Part 7 for delivery up of infringing copies of articles specifically designed or adapted for making infringing copies.

*Article 130* defines the power to issue search warrants.

*Article 131* provides for the criminal liability of those who aid, abet, counsel or procure the commission of offences under the Law.

*Article 132* provides power to require Customs & Excise to treat infringing copies as prohibited goods.

*Article 133* provides power for Orders to be made which are supplementary to Article 132.

*Article 134* defines the period after which an Article 120 Order is no longer available.

*Article 135* provides ancillary powers and provisions in relation to an Order under Articles 120 or 129, or the exercise of rights conferred by Article 121.

*Article 136* provides power to order the confiscation of infringing copies.

*Part 8* defines and establishes a scheme for licensing under copyright.

*Article 137* is an interpretation provision in relation to Part 8.

*Article 138* defines the schemes to which Articles 139 - 144 apply.

*Article 139* prescribes the circumstances under which an application may be made to the Tribunal for the approval of a licensing scheme.

*Article 140* provides powers for the reference of a licensing scheme to the Tribunal by a person who claims that he requires a licence.

*Article 141* makes supplementary provisions in relation to the reference of licensing schemes to Tribunals.

*Article 142* makes provision for a failed applicant for a licence to appeal to the Tribunal.

*Article 143* makes provision for a review of an order under Article 142.

*Article 144* makes ancillary provisions in relation to Orders made under Articles 139, 140 or 141.

*Article 145* defines the licences to which Articles 146 to 149 apply.

*Article 146* enables the terms of a prospective licence to be referred to the Tribunal for arbitration.

*Article 147* enables the expiry of a licence to be referred to the Tribunal for review.

*Article 148* provides for the review of orders made under Articles 146 or 147.

*Article 149* prescribes the effect of an order under Articles 146 or 147.

*Article 150* makes provision for what may reasonably be determined by the Tribunal under Part 8.

*Article 151* prescribes the matters to which the Tribunal shall have regard when considering applications made under Part 8.

*Article 152* prescribes the matters to which the Tribunal should have regard when considering the charges that should be paid for a licence for which application is made under Part 8.

*Article 153* provides that the Tribunal, when considering applications made under Part 8 for licences relating to sound recordings, films, broadcasts or cable programmes, shall have regard to conditions imposed by the promoters of events.

*Article 154* requires the Tribunal to have regard to payments in respect of underlying rights when considering the charges for a licence on an application under Part 8 or Article 171.

*Article 155* prescribes matters to be taken into account by the Tribunal when considering applications for broadcasts or cable programmes to be immediately re-broadcast.

*Article 156* requires the Tribunal to have regard to all relevant considerations, as well as to those matters referred to in Articles 150-155.

*Article 157* defines the circumstances under which rights granted by Article 159 are exercisable.

*Article 158* prescribes the conditions to be complied with before a person may exercise rights conferred by Article 159.

*Article 159* confers, subject to conditions, rights for a person who includes sound recordings in respect of which copyright subsists in a broadcast or cable programme.

*Article 160* confers a general ability on the Tribunal, when they consider applications, to settle terms of payments under the Law.

*Article 161* is a general power to refer to the Tribunal questions about the reasonableness of conditions imposed.

*Article 162* enables a person to apply to the Tribunal for the review of an Order under Articles 160 or 161.

*Article 163* determines the factors to be taken into account by the Tribunal when considering references under Articles 160 or 161, or Orders under Articles 162.

*Article 164* enables the Committee by Order to amend Articles 157-163, subject to conditions.

*Article 165* prescribes the indemnities to be implied in schemes for licensing or licences, where the scheme or licence does not specify the works to which it applies sufficiently accurately.

*Article 166* prescribes the procedure to enable the Committee to determine whether a scheme or licence shall extend to a particular work.

*Article 167* enables the Committee to vary or revoke an Article 166 determination.

*Article 168* provides for appeals to the Tribunal against an Article 166 determination.

*Article 169* enables the Committee to inquire into whether new provision is required to enable educational establishments to make copies of copyright works for the purposes of instruction without infringing copyright.

*Article 170* enables the Committee to implement by Order a recommendation made following an Article 169 inquiry.

*Article 171* provides for the Tribunal to settle the amount payable where the Committee makes an Article 84 Order for the lending to the public of copyright works.

*Article 172* provides for the certification by the Committee of licensing schemes covering educational establishments' recording of broadcasts and cable programmes; the making of abstracts of scientific or technical articles; the lending to the public of certain works; the provision of sub-titled copies of broadcasts or cable programmes for the hard of hearing; or the copying of copyright works by educational establishments.

*Article 173* regulates the rights of a copyright owner in relation to cable re-transmission of his work.

*Part 9* sets up the Jersey Copyright Tribunal and defines its jurisdiction and powers.

*Article 174* establishes the Jersey Copyright Tribunal.

*Article 175* makes provisions in relation to the membership of the tribunal.

*Article 176* provides for the payment of remuneration to the members of the Tribunal and for the appointment of staff.

*Article 177* makes provisions governing the proceedings of the Tribunal.

*Article 178* specifies the functions of the Tribunal.

*Article 179* enables the Committee to make rules governing the procedures of the Tribunal.

*Article 180* provides for orders in relations to the costs of the parties to proceedings before the Tribunal.

*Article 181* enables the Tribunal to award interest in respect of any monetary award it may make.

*Article 182* provides for appeals from decisions of the Tribunal to the Courts on points of law only.

*Part 10* prescribes conditions precedent for, and the extent of, copyright protection.

*Article 183* provides that copyright may not exist unless certain qualifications are satisfied.

*Article 184* specifies the qualification requirements of authors.

*Article 185* specifies the qualification requirements in relation to the country of first publication of a work.

*Article 186* specifies the qualification requirements in relation to the place of transmission of a broadcast.

*Article 187* enables the Committee to apply the Law, or parts of it, in relation to other countries.

*Article 188* enables the Committee to restrict the protection given by the Law to citizens of other countries if those countries do not give adequate protection to Jersey works.

*Article 189* defines “territorial waters”.

*Article 190* applies the Law to Jersey Ships.

*Part 11* is a separate Part that deals exclusively with rights that are similar to copyright, but relate only to databases.

*Article 191* is an interpretation provision in relation to Part 11.

*Article 192* establishes database right.

*Article 193* defines the maker of a database.

*Article 194* provides the maker of a database shall be the first owner of the database right in it.

*Article 195* specifies acts that infringe database right.

*Article 196* specifies the period of protection given by database right.

*Article 197* specifies the qualifications that must be complied with for database right to exist.

*Article 198* provides that certain terms in an agreement governing database right shall be void.

*Article 199* and *Schedule 3* specify the exceptions to database right.

*Article 200* specifies the acts which may be permitted if performed on the assumption that database right in a particular

database has expired.

*Article 201* specifies certain presumptions that have to be made in proceedings brought under Part 11.

*Article 202* specifies the provisions of the Law that are to apply in relation to database right.

*Article 203* brings into force the provisions contained in Schedule 4 which relates to the licensing of database right.

*Article 204* specifies the jurisdiction of the Copyright Tribunal in relation to database right.

*Article 205* is an interpretation provision.

*Article 206* provides for the application of the Law to all databases, whether made before or after commencement.

*Article 207* protects agreements made and acts done in relation to database right before the commencement of the law.

*Article 208* makes savings in relation to certain databases.

*Article 209* specifies the period for which database right is to exist in relation to databases in existence on commencement of the law.

*Part 12* is a Part that deals with a number of miscellaneous issues in relation to copyright, including the establishment of rights for government; the fraudulent reception of broadcasts for which payment should be made; and transitional provisions.

*Article 210* provides for Crown copyright.

*Article 211* vests copyright in Acts of Parliament and Measures of the General Synod in the Crown.

*Article 212* provides for States copyright.

*Article 213* vests copyright in Laws, Triennial Regulations and Projets in the States.

*Article 214* makes supplementary provisions with regards to States copyright.

*Article 215* enables the Committee to specify international organizations and the works in which copyright is to vest in those organizations.

*Article 216* makes provision for copyright in folklore and other anonymous works.

*Article 217* makes supplementary provision for cases whose copyright works are published in electronic form under licence.

*Article 218* specifies contractual provisions in relation to the use of computer programs which are to be void.

*Article 219* specifies contractual provisions in relation to databases which are to be void.

*Article 220* makes the dishonest reception of a broadcast or cable programme with intent to avoid paying the charges for such programme a criminal offence.

*Article 221* makes the manufacture, possession for commercial purposes, installation, distribution or advertisement of unauthorized decoders a criminal offence.

*Article 222* authorizes the issue of search warrants in relation to suspected Article 221 offences.

*Article 223* authorizes the forfeiture of unauthorized decoders in certain circumstances.

*Article 224* gives certain rights to broadcasters of programmes for which a charge is made.

*Article 225* makes supplementary provisions in relation to foreign countries who do not protect Jersey broadcasts.

*Article 226* together with *Schedule 1* makes transitional provisions and savings.

*Article 227* preserves existing privileges and rights under other enactments and the customary law.

*Article 228* is an interpretation provision.

*Article 229* provides for the construction of references to “copyright owner” in relation to joint ownership.

*Article 230* is an interpretation provision in relation to educational establishments.

*Article 231* is an interpretation provision in relation to publication.

*Article 232* makes provision for the execution of documents by corporate bodies.

*Article 233* provides that Orders under the Law have to be laid before the States, and that U.K. Statutory Instruments may be enacted in the Island by reference in an Order made under the Law.

*Article 234* enables the Committee to modify the Law by Order to give effect to U.K. international obligations that extend to the Island.

*Article 235* and *Schedule 2* make consequential amendments and repeals.

*Article 236* provides for the citation and commencement of the Law.



# **COPYRIGHT (JERSEY) LAW 200-**

---

## **ARRANGEMENT OF ARTICLES**

---

### *PART 1*

#### **INTRODUCTORY**

##### *Interpretation*

1. General interpretation.

### *PART 2*

#### **SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT**

##### *Introduction*

2. Copyright and copyright works.
3. Rights subsisting in copyright works.

##### *Description of work and related provisions*

4. Literary, dramatic and musical works.
5. Databases.
6. Artistic works.
7. Sound recordings.
8. Films.
9. Broadcasts.
10. Safeguards in case of certain satellite broadcasts.
11. Cable programmes.
12. Published editions.

##### *Authorship and ownership of copyright*

13. Authorship of work.
14. Works of joint authorship.
15. First ownership of copyright.

##### *Duration of copyright*

16. Duration of copyright in literary, dramatic, musical or artistic works.
17. Duration of copyright in sound recordings.
18. Duration of copyright in films.
19. Duration of copyright in broadcasts and cable programmes.

20. Duration of copyright in typographical arrangement of published editions.
21. Meaning of country of origin.

### *PART 3*

#### RIGHTS OF COPYRIGHT OWNER

##### *The acts restricted by copyright*

22. The acts restricted by copyright in a work.

##### *Primary infringement of copyright*

23. Infringement of copyright by copying.
24. Infringement by issue of copies to the public.
25. Infringement by rental or lending of work to the public.
26. Infringement by performance, showing or playing of work in public.
27. Infringement by broadcasting or inclusion in a cable programme service.
28. Infringement by making adaptation or act done in relation to adaptation.

##### *Secondary infringement of copyright*

29. Secondary infringement: importing infringing copy.
30. Secondary infringement: possessing or dealing with infringing copy.
31. Secondary infringement: making, importing, possessing or dealing with article for making infringing copies.
32. Secondary infringement: permitting use of premises for infringing performance.
33. Secondary infringement: provision of apparatus for infringing performance, etc.

##### *Infringing copies*

34. Meaning of “infringing copy”.

### *PART 4*

#### ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

##### *Introductory*

35. Introductory provisions.

##### *General*

36. Research and private study.
37. Criticism, review and news reporting.
38. Incidental inclusion of copyright material.
39. Making a single accessible copy for personal use.

40. Multiple copies for visually impaired persons.
41. Intermediate copies and records.
42. Licensing schemes.
43. Limitations, etc. following infringement of copyright.

*Education*

45. Things done for purposes of instruction or examination.
46. Anthologies for educational use.
47. Performing, playing or showing work in course of activities of educational establishment.
48. Recording by educational establishments of broadcasts and cable programmes.
49. Reprographic copying by educational establishments of passages from published works.
50. Lending of copies by educational establishments.

*Libraries and archives*

51. Libraries and archives: introductory.
52. Copying by librarians: articles in periodicals.
53. Copying by librarians: parts of published works.
54. Restriction on production of multiple copies of the same material.
55. Copying by librarians: supply of copies to other libraries.
56. Copying by librarians or archivists: replacement copies of works.
57. Copying by librarians or archivists: certain unpublished works.
58. Copy of work required to be made as condition of export.

*Public administration*

59. States and judicial proceedings.
60. Committees of Inquiry and statutory inquiries.
61. Material open to public inspection or on official register.
62. Material communicated to the Crown or the States in the course of public business.
63. Public records.
64. Acts done under statutory authority.

*Computer programs: lawful users*

65. Back up copies.
66. Decompilation.
67. Other acts permitted to lawful users.

68. Acts permitted in relation to databases.

*Designs*

69. Design documents and models.

70. Effect of exploitation of design derived from artistic work.

71. Things done in reliance on registration of design.

*Typefaces*

72. Use of typeface in ordinary course of printing.

73. Articles for producing material in particular typeface.

*Works in electronic form*

74. Transfer of copies of works in electronic form.

*Miscellaneous: literary, dramatic, musical and artistic works*

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

76. Use of notes or recordings of spoken words in certain cases.

77. Public reading or recitation.

78. Abstracts of scientific or technical articles.

79. Recordings of folk-songs.

80. Representation of certain artistic works on public display.

81. Advertisement of sale of artistic work.

82. Making of subsequent works by same artist.

83. Reconstruction of buildings.

*Miscellaneous: lending of works and playing of sound recordings*

84. Lending to public of copies of certain works.

*Miscellaneous: films and sound recordings*

85. Films: acts permitted on assumptions as to expiry of copyright etc.

86. Playing of sound recordings for purposes of club, society, etc.

*Miscellaneous: broadcasts and cable programmes*

87. Incidental recording for purposes of broadcast or cable programme.

88. Recording for purposes of supervision and control of broadcasts and cable programmes.

89. Recording for purposes of time-shifting.

90. Photographs of television broadcasts or cable programmes.

- 91. Free public showing or playing of broadcast or cable programme.
- 92. Reception and re-transmission of broadcast in cable programme service.
- 93. Provision of sub-titled copies of broadcast or cable programme.
- 94. Recording for archival purposes.

*Adaptations*

- 95. Adaptations.

*PART 5*

MORAL RIGHTS

*Right to be identified as author or director*

- 96. Right to be identified as author or director.
- 97. Requirement that right be asserted.
- 98. Exceptions to right.

*Right to object to derogatory treatment of work*

- 99. Right to object to derogatory treatment of work.
- 100. Exceptions to right.
- 101. Qualification of right in certain cases.
- 102. Infringement of right by possessing or dealing with infringing article.

*False attribution of work*

- 103. False attribution of work.

*Right to privacy of certain photographs and films*

- 104. Right to privacy of certain photographs and films.

*Supplementary*

- 105. Duration of rights.
- 106. Consent and waiver of rights.
- 107. Application of provisions to joint works.
- 108. Application of provisions to parts of works.

*PART 6*

DEALINGS WITH RIGHTS IN COPYRIGHT WORKS

*Copyright*

- 109. Assignment and licences.
- 110. Prospective ownership of copyright.

- 111. Exclusive licences.
- 112. Copyright to pass under will with unpublished work.
- 113. Presumption of transfer of rental right in case of film production agreement.

*Right to equitable remuneration where rental right transferred*

- 114. Right to equitable remuneration where rental right transferred.

*Reference of amount to Tribunal*

- 115. Equitable remuneration: reference of amount to Tribunal.

*Moral rights*

- 116. Moral rights not assignable.
- 117. Transmission of moral rights on death.

*PART 7*

REMEDIES FOR INFRINGEMENT

*Rights and remedies of copyright owner*

- 118. Infringement actionable by copyright owner.
- 119. Damages in infringement action.
- 120. Order for delivery up.
- 121. Right to seize infringing copies, etc.

*Rights and remedies of exclusive licensee*

- 122. Rights and remedies of exclusive licensee.
- 123. Exercise of concurrent rights.

*Remedies for infringement of moral rights*

- 124. Remedies for infringement of moral rights.

*Presumptions*

- 125. Presumptions relevant to literary, dramatic, musical and artistic works.
- 126. Presumptions relevant to sound recordings and films.
- 127. Presumptions relevant to works subject to Crown or States copyright.

*Offences*

- 128. Criminal liability for making or dealing with infringing articles, etc.
- 129. Order for delivery up in criminal proceedings.
- 130. Search warrants.

131. Criminal liability.

*Importation of infringing copies*

132. Infringing copies may be treated as prohibited goods.

133. Power of Committee to make Orders.

*Supplementary*

134. Period after which remedy of delivery up not available.

135. Order as to disposal of infringing copy or other article.

136. Forfeiture of infringing copies, etc.

*PART 8*

**COPYRIGHT LICENSING**

*Licensing schemes and licensing bodies*

137. Licensing schemes and licensing bodies.

*References and applications with respect to licensing schemes*

138. Licensing schemes to which the following Articles apply.

139. Reference of proposed licensing scheme to Tribunal.

140. Reference of licensing scheme to Tribunal.

141. Further reference of scheme to Tribunal.

142. Application for grant of licence in connection with licensing scheme.

143. Application for review of order as to entitlement to licence.

144. Effect of order of Tribunal as to licensing scheme.

*References and applications with respect to licensing by licensing bodies*

145. Licences to which the following Articles apply.

146. Reference to Tribunal of terms of proposed licences.

147. Reference to Tribunal of terms of expiring licence.

148. Application for review of order as to licence.

149. Effect of order of Tribunal as to licence.

*Factors to be taken into account in certain classes of case*

150. General considerations: unreasonable discrimination.

151. Licences for reprographic copying.

152. Licences for educational establishments in respect of works included in broadcasts or cable programmes.

153. Licences to reflect conditions imposed by promoters of events.

- 154. Licences to reflect payments in respect of underlying rights.
- 155. Licences in respect of works included in re-transmissions.
- 156. Mention of specific matters not to exclude other relevant considerations.

*Use of right of sound recordings in broadcasts and  
cable programme services*

- 157. Circumstances in which right available.
- 158. Notice of intention to exercise right.
- 159. Conditions for exercise of right.
- 160. Applications to settle payments.
- 161. References etc., about conditions, information and other terms.
- 162. Application for review of order.
- 163. Factors to be taken into account.
- 164. Power to amend Articles 157 to 163.

*Implied indemnity in schemes or licences for reprographic copying*

- 165. Implied indemnity in certain schemes and licences for reprographic copying.

*Reprographic copying by educational establishments*

- 166. Power to extend coverage of scheme or licence.
- 167. Variation or discharge of determination extending scheme or licence.
- 168. Appeals against determinations.
- 169. Inquiry whether new scheme or general licence required.
- 170. Statutory licence where recommendation not implemented.

*Royalty or other sum payable for lending of certain works*

- 171. Royalty or other sum payable for lending of certain works.

*Certification of licensing schemes*

- 172. Certification of licensing schemes.
- 173. Collective exercise of certain rights in relation to cable re-transmission.

*PART 9*

THE JERSEY COPYRIGHT TRIBUNAL

*The Tribunal*

- 174. The Jersey Copyright Tribunal.
- 175. Membership of Tribunal.



- 176. Financial provisions.
- 177. Constitution for purposes of proceedings.

*Jurisdiction and procedure*

- 178. Jurisdiction of the Tribunal.
- 179. General power to make rules.
- 180. Costs, proof of orders etc.
- 181. Award of interest.
- 182. Appeal to the Court on point of law.

*PART 10*

QUALIFICATION FOR AND EXTENT OF COPYRIGHT PROTECTION

*Qualification for copyright protection*

- 183. Qualification for copyright protection.
- 184. Qualification by reference to author.
- 185. Qualification by reference to country of first publication.
- 186. Qualification by reference to place of transmission.

*Application of this Law*

- 187. Application of this Law in relation to other countries.
- 188. Denial of copyright protection to citizens of other countries not giving adequate protection to Jersey works.

*Supplementary*

- 189. Territorial waters.
- 190. Jersey ships.

*PART 11*

DATABASE RIGHT

- 191. Interpretation.
- 192. Database right.
- 193. The maker of a database.
- 194. First ownership of database right.
- 195. Acts infringing database right.
- 196. Term of protection.
- 197. Qualification for database right.

- 198. Avoidance of certain terms affecting lawful users.
- 199. Exceptions to database right.
- 200. Acts permitted on assumption as to expiry of database right.
- 201. Presumptions relevant to database right.
- 202. Application of copyright provisions to database right.
- 203. Licensing of database right.
- 204. Database right: jurisdiction of Tribunal.

*Savings and transitional provisions*

- 205. Introductory.
- 206. General Rule.
- 207. General savings.
- 208. Saving for copyright in certain existing databases.
- 209. Database right: term applicable to certain existing databases.

*PART 12*

MISCELLANEOUS AND GENERAL

*Crown and States copyright*

- 210. Crown copyright.
- 211. Copyright in Acts and Measures.
- 212. States copyright.
- 213. Copyright in Laws, Triennial Regulations and Projets de Loi.
- 214. Supplementary provisions with respect to States copyright.

*Other miscellaneous provisions*

- 215. Copyright vesting in certain international organizations.
- 216. Folklore, etc.: anonymous unpublished works.

*Devices designed to circumvent copy-protection*

- 217. Devices designed to circumvent copy-protection.

*Computer programs*

- 218. Avoidance of certain terms.

*Databases*

- 219. Avoidance of certain terms relating to databases.

*Fraudulent reception of programmes*

- 220. Fraudulently receiving programmes.
- 221. Unauthorized decoders.
- 222. Search warrants.
- 223. Forfeiture of unauthorized decoders.
- 224. Rights and remedies in respect of apparatus, &c. for unauthorized reception of transmissions.
- 225. Supplementary provisions as to fraudulent reception.

*Transitional provisions and savings*

- 226. Transitional provisions and savings.
- 227. Rights and privileges under other enactments or the customary law.

*Interpretation*

- 228. Meaning of EEA national and EEA State.
- 229. Construction of references to copyright owner.
- 230. Meaning of “educational establishment” and related expressions.
- 231. Meaning of publication and commercial publication.
- 232. Requirement of signature: application in relation to body corporate.

*Supplemental*

- 233. Regulations and Orders.
- 234. Modification of Law.
- 235. Consequential amendments and repeals.
- 236. Citation and commencement.

**SCHEDULES**

- Schedule 1 - Transitional Provisions.
- Schedule 2 - Repeals and Amendment of Enactments.
- Schedule 3 - Exceptions to Database Right for Public Administration
- Schedule 4 - Licensing of Database Right

**COPYRIGHT (JERSEY) LAW 200-**

---

**A LAW** to restate the law of copyright with amendments and for ancillary and connected purposes; sanctioned by Order of Her Majesty in Council of the

---

(Registered on the            day of            200-)

---

**STATES OF JERSEY**

---

The            day of            200-

---

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

*PART 1*

INTRODUCTORY

*Interpretation*

ARTICLE 1

**General Interpretation**

(1) In this Law -

“article”, in the context of an article in a periodical, includes an item of any description;

“business” includes a trade or profession;

“collective work” means -

(a) a work of joint authorship; or

(b) a work in which there are distinct contributions by different authors or in which works or parts of works of different authors are incorporated;

“the Community Treaties” has the same meaning as in the European Communities (Jersey) Law 1973;<sup>[2]</sup>

“the Committee” means the Industries Committee;

“Committee of Inquiry” means a committee appointed under Article 36B of the States of Jersey Law 1966;<sup>[3]</sup>

“country” includes any territory;

“Court” means the Royal Court;

“the Crown” means the Crown in right of the Island;

“EEA, EEA national and EEA State” have the meanings ascribed to them by Article 228;

“electronic” means actuated by electric, magnetic, electro-chemical or electro-mechanical energy;

“in electronic form” means in a form usable only by electronic means;

“employed”, “employee”, “employer” and “employment” refer to employment under a contract of service or of apprenticeship;

“facsimile copy” includes a copy which is reduced or enlarged in scale;

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“international organization” means an organization the members of which include one or more states;

“judicial proceedings” includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person’s legal rights or liabilities;

“police officer” means a member of the Honorary Police or a member of the States of Jersey Police Force;

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

“public library” means the Jersey Library or any other library administered by or on behalf of the States;

“rental right” means the right of a copyright owner to authorize or prohibit the rental of copies of the work;

“reprographic copy” and “reprographic copying” refer to copying by means of a reprographic process;

“reprographic process” means a process -

- (a) for making facsimile copies; or
- (b) involving the use of an appliance for making multiple copies,

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

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

“sufficient acknowledgement” means an acknowledgement identifying the work in question by its title or other description, and identifying the author unless -

- (a) in the case of a published work, it is published anonymously;
- (b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry;

“sufficient disclaimer”, in relation to an act capable of infringing the right conferred by Article 99, means a clear and reasonably prominent indication -

- (a) given at the time of the act; and
- (b) if the author or director is then identified, appearing along with the identification,

that the work has been subjected to treatment to which the author or director has not consented;

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

“Tribunal” means the Jersey Copyright Tribunal established by Article 174;

“typeface” includes an ornamental motif used in printing;

“unauthorized”, as regards anything done in relation to a work, means done otherwise than -

- (a) by or with the licence of the copyright owner;
- (b) if copyright does not subsist in the work, by or with the licence of the author or, in a case where Article 15(2) would have applied, the author’s employer or, in either case, persons lawfully claiming under him, or
- (c) in pursuance of Article 62;

“wireless telegraphy” means the sending of electro-magnetic energy over paths not provided by a material substance constructed or arranged for that purpose but does not include the transmission of microwave energy between terrestrial fixed points; and

“writing” includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded, and “written” shall be construed accordingly.

(2) A reference in this Law to a Part, Article or Schedule by number only and without further identification is a reference to the Part, Article or Schedule of that number in this Law.

(3) A reference in an article or other division of this Law to a paragraph, sub-paragraph or clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph or clause of that number or letter in the article or other division of this Law.

(4) Unless the context otherwise requires, a reference in this Law to an enactment is a reference to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under another enactment, including another provision of this Law.

(5) Unless the context otherwise requires, a reference in this Law to an enactment comprised in, or in subordinate legislation made under, an Act of Parliament of the United Kingdom is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied by or under another enactment, including another provision of this Law.

## *PART 2*

### SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT

#### *Introduction*

#### ARTICLE 2

##### **Copyright and copyright works**

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

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

(2) In this Law “copyright work” means a work of any of those descriptions in which copyright subsists.

(3) Copyright shall not subsist in a work unless the requirements of this Law with respect to qualification for copyright protection are met.

#### ARTICLE 3

### **Rights subsisting in copyright works**

(1) The owner of the copyright in a work of any description shall have the exclusive right to do the acts specified in Part 3 as the acts restricted by the copyright in a work of that description.

(2) In relation to certain descriptions of copyright work the following rights conferred by Part 5 shall subsist in favour of the author, director or commissioner of the work, whether or not he is the owner of the copyright -

- (a) the right to be identified as author or director under Article 96;
- (b) the right to object to derogatory treatment of work under Article 99; and
- (c) the right to privacy of certain photographs and films under Article 104.

#### *Description of work and related provisions*

### ARTICLE 4

#### **Literary, dramatic and musical works**

(1) In this Law -

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

- (a) a table or compilation, other than a database;
- (b) a computer program;
- (c) preparatory design material for a computer program; and
- (d) a database.

“dramatic work” includes a work of dance or mime; and

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

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

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

### ARTICLE 5

#### **Databases**

(1) In this Law “database” means a collection of independent works, data or other materials which -

- (a) are arranged in a systematic or methodical way; and
- (b) are individually accessible by electronic or other means.

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

### ARTICLE 6

#### **Artistic works**

- (1) In this Law “artistic work” means -
  - (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality;
  - (b) a work of architecture being a building or a model for a building; or
  - (c) a work of artistic craftsmanship.

- (2) In this Law -

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

“graphic work” includes -

- (a) any painting, drawing, diagram, map, chart or plan; and
- (b) any engraving, etching, lithograph, woodcut or similar work;

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

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

## ARTICLE 7

### **Sound recordings**

(1) In this Law “sound recording” means a recording of sounds, from which the sounds may be reproduced, or a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced, regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

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

## ARTICLE 8

### **Films**

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

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

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

- (a) references in this Law to showing a film include playing the film sound track to accompany the film; and
- (b) references to playing a sound recording do not include playing the sound track accompanying the film.

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

(5) Nothing in this Article shall affect any copyright subsisting in a film sound track as a sound recording.

## ARTICLE 9

### **Broadcasts**

(1) In this Law a “broadcast” means a transmission by wireless telegraphy of visual images, sounds or other information which is capable of being lawfully received by members of the public, or is transmitted for presentation to



members of the public, and references to broadcasting shall be construed accordingly.

(2) An encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.

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

- (a) to the person transmitting the programme, if he has responsibility to any extent for its contents; and
- (b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission,

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

(4) For the purposes of this Law, 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.

(5) Paragraphs (3) and (4) shall have effect subject to Article 10.

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

(7) Copyright shall not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast or in a cable programme.

## ARTICLE 10

### **Safeguards in case of certain satellite broadcasts**

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

- (a) exclusive rights in relation to broadcasting equivalent to those conferred by Article 27 on the authors of literary, dramatic, musical and artistic works, films and broadcasts; and
- (b) a right for authors of sound recordings and performers to share in a single equitable remuneration in respect of the broadcasting of sound recordings.

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

- (a) that place shall be treated as the place from which the broadcast is made; and
- (b) the person operating the uplink station shall be treated as the person making the broadcast.

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

- (a) that person shall be treated as the person making the broadcast; and
- (b) the place in which he has his principal establishment in the Island or in an EEA State shall be treated as the place from which the broadcast is made.

## ARTICLE 11

### **Cable programmes**

(1) In this Law -

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

“cable programme service” means a service which consists wholly or mainly in sending visual images, sounds or other information by means of a telecommunications system, otherwise than by wireless telegraphy, for reception -

- (a) at two 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,

and which is not, or so far as it is not, excepted by or under the following provisions of this Article.

(2) The following are excepted from the definition of “cable programme service” -

- (a) a service or part of a service of which it is an essential feature that while visual images, sounds or other information are being conveyed by the person providing the service there will or may be sent from each place of reception, by means of the same system or the same part of it, information (other than signals sent for the operation or control of the service) for reception by the person providing the service or other persons receiving it;
- (b) a service run for the purposes of a business where -
  - (i) no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system,
  - (ii) the visual images, sounds or other information are conveyed by the system solely for purposes internal to the running of the business and not by way of rendering a service or providing amenities for others, and
  - (iii) the system is not connected to any other telecommunication system;
- (c) a service run by a single individual where -
  - (i) all the apparatus comprised in the system is under his control,
  - (ii) the visual images, sounds or other information conveyed by the system are conveyed solely for his domestic purposes, and
  - (iii) the system is not connected to any other telecommunication system;
- (d) services where all the apparatus comprised in the system is situated in, or connects, premises which are in single occupation, and the system is not connected to any other telecommunications system, other than services operated as part of the amenities provided for residents or inmates of premises run as a business; and
- (e) services which are, or to the extent that they are, run for persons providing broadcasting or cable programme services or providing programmes for those services.

(3) The Committee may by Order amend paragraph (2) so as to add or remove exceptions, subject to any transitional provision that appears to it to be appropriate.

(4) References in this Law to the inclusion of a cable programme or work in a cable programme service are to its transmission as part of the service, and references to the person including it are to the person providing the service.

(5) Copyright shall not subsist in a cable programme -

- (a) if it is included in a cable programme service by reception and immediate re-transmission of a broadcast; or

- (b) if it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

## ARTICLE 12

### **Published editions**

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

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

### *Authorship and ownership of copyright*

## ARTICLE 13

### **Authorship of work**

(1) In this Law “author” in relation to a work, means the person who creates it.

(2) That person shall be taken to be -

(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 re-transmission, 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; and

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

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

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

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

## ARTICLE 14

### **Works of joint authorship**

(1) In this Law 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 in any case where more than one person is to be taken as making the broadcast.

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

## ARTICLE 15

## **First ownership of copyright**

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

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

(3) This Article shall not apply to Crown copyright or States copyright or to copyright which subsists by virtue of Article 215.

### *Duration of copyright*

#### ARTICLE 16

##### **Duration of copyright in literary, dramatic, musical or artistic works**

(1) Subject to the following provisions of this Article copyright in a literary, dramatic, musical or artistic work shall expire at the end of the period of 70 years from the end of the calendar year in which the author dies.

(2) If the work is of unknown authorship, copyright shall expire -

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

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

(3) Paragraph (1) shall apply if the identity of the author becomes known before the end of the period specified in paragraph (2)(a) or (b).

(4) For the purposes of paragraph (2) making available to the public shall include-

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

(i) performance in public, or

(ii) being broadcast or included in a cable programme service;

(b) in the case of an artistic work -

(i) exhibition in public,

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

(iii) being included in a broadcast or cable programme service.

(5) In determining generally for the purposes of paragraph (2) whether a work has been made available to the public no account shall be taken of any unauthorized act.

(6) Where the country of origin of the work is not the Island or an EEA state and the author of the work is not a national of an EEA state the duration of copyright is that to which the work is entitled in the country of origin, if that does not exceed the period which would apply under paragraphs (1) to (5).

(7) If the work is computer-generated or in the form of a database the above provisions shall not apply, and copyright shall expire at the end of the period of 50 years from the end of the calendar year in which the work was made.

(8) The provisions of this Article shall be adapted as follows in relation to a work of joint authorship -

(a) the reference in paragraph (1) to the death of the author shall be construed-

- (i) if the identity of all the authors is known, as a reference to the death of the last of them to die, and
  - (ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known;
- (b) the reference in paragraph (3) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known;
  - (c) the reference in paragraph (6) to the author not being a national of an EEA state shall be construed as a reference to none of the authors being a national of an EEA state.
- (9) This Article shall not apply to Crown copyright or States copyright or to copyright which subsists by virtue of Article 215.

## ARTICLE 17

### **Duration of copyright in sound recordings**

- (1) The following provisions of this Article shall have effect with respect to the duration of copyright in a sound recording.
- (2) Subject to the provisions of paragraphs (3), (4) and (5), copyright shall expire -
  - (a) at the end of the period of 50 years from the end of the calendar year in which it is made; or
  - (b) if during that period it is released, 50 years from the end of the calendar year in which it is released.
- (3) For the purposes of paragraph (2) a sound recording is “released” when it is first published, played in public, broadcast or included in a cable programme service, but in determining whether a sound recording has been released no account shall be taken of any unauthorized act.
- (4) Where the author of a sound recording is not a national of an EEA state, the duration of copyright shall be that to which the sound recording is entitled in the country of which the author is a national, if that does not exceed the period which would apply under paragraphs (2) and (3).
- (5) If or to the extent that the application of paragraph (4) would be at variance with an international obligation to which the Island through the United Kingdom became subject prior to 29th October 1993, the duration of copyright shall be as specified in paragraphs (2) and (3).

## ARTICLE 18

### **Duration of copyright in films**

- (1) The following provisions of this Article shall have effect with respect to the duration of copyright in a film.
- (2) Subject to the provisions of paragraphs (3) to (11), copyright shall expire at the end of the period of 70 years from the end of the calendar year in which the death occurs of the last to die of the following persons -
  - (a) the principal director;
  - (b) the author of the screenplay;
  - (c) the author of the dialogue; or
  - (d) the composer of music specially created for and used in the film.
- (3) If the identity of one or more of the persons referred to in paragraph (2)(a) to (d) is known and the identity of one or more others is not, the reference in that paragraph to the death of the last of them to die shall be construed as a reference to the death of the last whose identity is known.
- (4) If the identity of the persons referred to in paragraph (2)(a) to (d) is unknown, copyright shall expire at -

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

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

(6) For the purposes of paragraph (4) “making available to the public” includes -

- (a) showing in public; or
- (b) being broadcast or included in a cable programme service.

(7) In determining generally for the purposes of paragraph (4) whether a film has been made available to the public no account shall be taken of any unauthorized act.

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

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

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

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

## ARTICLE 19

### **Duration of copyright in broadcasts and cable programmes**

(1) The following provisions of this Article have effect with respect to the duration of copyright in a broadcast or cable programme.

(2) Subject to the provisions of paragraphs (3) to (6), copyright in a broadcast or cable programme shall expire at the end of the period of 50 years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service.

(3) Where the author of the broadcast or cable programme is not a national of an EEA state, the duration of copyright in the broadcast or cable programme shall be that to which it is entitled in the country of which the author is a national, if that does not exceed the period which would apply under paragraph (2).

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

(5) Copyright in a repeat broadcast or cable programme shall expire at the same time as the copyright in the original, broadcast or cable programme; and accordingly no copyright shall arise in respect of a repeat broadcast or cable programme which is broadcast or included in a cable programme after the expiry of the copyright in the original broadcast or cable programme.

(6) In this Article, a “repeat broadcast or cable programme” means a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service.

## ARTICLE 20

**Duration of copyright in typographical arrangement  
of published editions**

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

ARTICLE 21

**Meaning of country of origin**

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

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

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

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

- (a) if any of those countries is an EEA state, the country of origin shall be that country; and
- (b) if none of those countries is an EEA state, the country of origin shall be the Berne Convention country which grants the shorter or shortest period of copyright protection.

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

- (a) if the work is a film and the maker of the film has his headquarters in, or is domiciled or resident in a Berne Convention country, that country;
- (b) if the work is a work of architecture constructed in a Berne Convention country or an artistic work incorporated in a building or other structure situated in a Berne Convention country, that country;
- (c) in any other case, the country of which the author of the work is a national.

(6) In this Article -

- (a) a “Berne Convention country” means a country which is a party to any Act of the International Convention for the Protection of Literary and Artistic Works signed at Berne on 9th September 1886; and
- (b) references to simultaneous publication are to publication within 30 days of the first publication.

*PART 3*

RIGHTS OF COPYRIGHT OWNER

*The acts restricted by copyright*

ARTICLE 22

**The acts restricted by copyright in a work**

(1) The owner of the copyright in a work shall have, in accordance with the following provisions of this Part, the exclusive right to do the following acts in the Island, which acts are referred to in this Law as the “acts restricted by the copyright” -

- (a) to copy the work;

- (b) to issue copies of the work to the public;
- (c) to rent or lend the work to the public;
- (d) to perform, show or play the work in public;
- (e) to broadcast the work or to include it in a cable programme service; and
- (f) to make an adaptation of the work or do any of the above in relation to an adaptation.

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

(3) References in this Law to the doing of an act restricted by the copyright in a work are to the doing of it, either directly or indirectly, in relation to the work as a whole or any substantial part of it, and it is immaterial whether any intervening acts themselves infringe the copyright.

- (4) This Part shall have effect subject to the provisions of Parts 4 and 8.

#### *Primary infringement of copyright*

### ARTICLE 23

#### **Infringement of copyright by copying**

(1) The copying of work shall be an act restricted by the copyright in every description of copyright work, and references in this Law to copying and copies shall be construed in accordance with paragraphs (2) to (6).

(2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form and includes storing the work in any medium by electronic means.

(3) In relation to an artistic work, copying includes the making of a copy in 3 dimensions of a 2-dimensional work and the making of a copy in 2 dimensions of a 3-dimensional work.

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

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

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

### ARTICLE 24

#### **Infringement by issue of copies to the public**

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

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

- (a) the act of putting into circulation in the Island or an EEA State copies not previously put into circulation in the Island or an EEA State by or with the consent of the copyright owner; or

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

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

- (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation; or



- (b) any subsequent importation of those copies into the Island or an EEA State,

except so far as paragraph (2)(a) applies to putting into circulation in the Island or an EEA State copies previously put into circulation outside the Island or an EEA State.

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

## ARTICLE 25

### **Infringement by rental or lending of work to the public**

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

- (a) a literary, dramatic or musical work;
- (b) an artistic work, other than -
  - (i) a work of architecture in the form of a building or a model for a building, or
  - (ii) a work of applied art; or
- (c) a film or a sound recording.

- (2) In this Law, subject to paragraphs (3) to (6) -

- (a) “rental” means making a copy of a work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage; and
- (b) “lending”, subject to Article 44(7) to (9), means making a copy of a work available for use, on terms that it will or may be returned otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public.

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

- (a) making available for the purpose of public performance, playing or showing in public, broadcasting or inclusion in a cable programme service;
- (b) making available for the purpose of exhibition in public; or
- (c) making available for on-the-spot reference use.

(4) Subject to Article 44(7) to (9), the expression “lending” does not include making available between establishments which are accessible to the public.

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

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

## ARTICLE 26

### **Infringement by performance, showing or playing of work in public**

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

- (2) In this Law “performance”, in relation to a work -

- (a) includes delivery in the case of lectures, addresses, speeches and sermons; and
- (b) in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording, film, broadcast or cable programme of the work.
- (3) The playing or showing of a work in public shall be an act restricted by the copyright in a sound recording, film, broadcast or cable programme.
- (4) Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds conveyed by electronic means, the person by whom the visual image or sounds are sent, and in the case of a performance, the performers, shall not be regarded as responsible for the infringement.

#### ARTICLE 27

##### **Infringement by broadcasting or inclusion in a cable programme service**

The broadcasting of a work or its inclusion in a cable programme service shall be an act restricted by the copyright in -

- (a) a literary, dramatic, musical or artistic work;
- (b) a sound recording or film; or
- (c) a broadcast or cable programme.

#### ARTICLE 28

##### **Infringement by making adaptation or act done in relation to adaptation**

- (1) The making of an adaptation of a work shall be an act restricted by the copyright in a literary, dramatic or musical work and for this purpose an adaptation is made when it is recorded, in writing or otherwise.
- (2) The doing of any of the acts specified in Articles 23 to 27, or paragraph (1), in relation to an adaptation of a work shall also be an act restricted by the copyright in a literary, dramatic or musical work and for this purpose it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.
- (3) In this Law “adaptation” -
  - (a) in relation to a literary work other than a computer program or a database or in relation to a dramatic work, means -
    - (i) a translation of the work,
    - (ii) a version of a dramatic work in which it is converted into a non-dramatic work or a non-dramatic work in which it is converted into a dramatic work,
    - (iii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;
  - (b) in relation to a computer program, means an arrangement or altered version of the program or a translation of it;
  - (c) in relation to a database, means an arrangement or altered version of the database or a translation of it; and
  - (d) in relation to a musical work, means an arrangement or transcription of the work.
- (4) In relation to a computer program a “translation” includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code.

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

*Secondary infringement of copyright*

ARTICLE 29

**Secondary infringement: importing infringing copy**

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

ARTICLE 30

**Secondary infringement: possessing or dealing with infringing copy**

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

- (a) possesses in the course of a business;
- (b) sells or lets for hire, or offers or exposes for sale or hire;
- (c) in the course of a business exhibits in public or distributes; or
- (d) distributes otherwise than in the course of a business so as to affect prejudicially the owner of the copyright,

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

ARTICLE 31

**Secondary infringement: making, importing, possessing or dealing with article for making infringing copies**

- (1) Copyright in a work shall be infringed by a person who, without the licence of the copyright owner -
- (a) makes;
  - (b) imports into the Island;
  - (c) possesses in the course of a business; or
  - (d) sells or lets for hire, or offers or exposes for sale or hire,

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

(2) Copyright in a work shall be infringed by a person who without the licence of the copyright owner transmits the work by means of a telecommunications system (otherwise than by broadcasting or inclusion in a cable programme service), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in the Island or elsewhere.

ARTICLE 32

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

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

(2) In this Article “place of public entertainment” includes premises which are occupied mainly for other

purposes but are from time to time made available for hire for the purposes of public entertainment.

#### ARTICLE 33

##### **Secondary infringement: provision of apparatus for infringing performance, etc.**

(1) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, by means of apparatus for playing sound recordings, showing films, or receiving visual images or sounds conveyed by electronic means, paragraphs (2), (3) and (4) shall apply.

(2) A person who supplied the apparatus, or any substantial part of it, shall be liable for the infringement if, when he supplied the apparatus or part -

- (a) he knew or had reason to believe that the apparatus was likely to be used to infringe copyright; or
- (b) in the case of apparatus the normal use of which involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be used to infringe copyright.

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

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

#### *Infringing copies*

#### ARTICLE 34

##### **Meaning of “infringing copy”**

(1) In this Law “infringing copy”, in relation to a copyright work, shall be construed in accordance with this Article.

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

(3) An article shall also be an infringing copy if -

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

(4) Where in any proceedings the question arises whether an article is an infringing copy and it is shown that the article is a copy of the work and that copyright subsists in the work or has subsisted at any time, it shall be presumed until the contrary is proved that the article was made at a time when copyright subsisted in the work.

(5) Nothing in paragraph (3) shall be construed as applying to an article which may lawfully be imported into the Island by virtue of any enforceable Community right within the meaning of Article 2(1) of the European Communities (Jersey) Law 1973.<sup>[4]</sup>

(6) In this Law “infringing copy” includes a copy falling to be treated as an infringing copy by virtue of Articles 39(6) and (9), 40(9) and (10), 41(2), 45(5), 48(3), 49(5), 51(4)(b), 74(2), 81(2) or 87(4), or any provision of an Order under Article 170.

#### *PART 4*

#### ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

*Introductory*

ARTICLE 35

**Introductory provisions**

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

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

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

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

*General*

ARTICLE 36

**Research and private study**

(1) Fair dealing with a literary work, other than a database, or a dramatic, musical or artistic work for the purposes of research or private study shall not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) Fair dealing with a database for the purposes of research or private study shall not infringe any copyright in the database if the source is indicated.

(3) Fair dealing with the typographical arrangement of a published edition for the purposes mentioned in paragraph (1) shall not infringe any copyright in the arrangement.

(4) Copying by a person other than the researcher or student himself shall not be fair dealing if -

(a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which an Order under Article 54 would not permit to be done under Article 52 or 53; or

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

(5) It shall not be fair dealing to convert a computer program expressed in a low level language into a version expressed in a higher level language or incidentally in the course of so converting the program, to copy it, (which acts are permitted if done in accordance with Article 66).

(6) The doing of anything in relation to a database for the purposes of research for a commercial purpose shall not be fair dealing with the database.

ARTICLE 37

**Criticism, review and news reporting**

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

(2) Subject to paragraph (3), fair dealing with a work (other than a photograph) for the purpose of reporting current events shall not infringe any copyright in the work if it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement shall be required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

#### ARTICLE 38

##### **Incidental inclusion of copyright material**

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

(2) Copyright in a work shall not be infringed by the issue to the public of copies, or the playing, showing, broadcasting or inclusion in a cable programme service, of anything the making of which was, by virtue of paragraph (1), not an infringement of the copyright.

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

#### ARTICLE 39

##### **Making a single accessible copy for personal use**

(1) If a visually impaired person has lawful possession or lawful use of a copy (“the master copy”) of the whole or part of -

- (a) a literary, dramatic, musical or artistic work; or
- (b) a published edition,

which is not accessible to him because of the impairment, it shall not be an infringement of copyright in the work, or in the typographical arrangement of the published edition, for an accessible copy of the master copy to be made for his personal use.

(2) Paragraph (1) shall not apply -

- (a) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or
- (b) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.

(3) Paragraph (1) shall not apply in relation to the making of an accessible copy for a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.

(4) An accessible copy made under this Article shall be accompanied by -

- (a) a statement that it is made under this Article; and
- (b) a sufficient acknowledgement.

(5) If a person makes an accessible copy on behalf of a visually impaired person under this Article and charges for it, the sum charged shall not exceed the cost of making and supplying the copy.

(6) If a person holds an accessible copy made under paragraph (1) when he is not entitled to have it made under that paragraph, the copy shall be treated as an infringing copy, unless he is a person falling within paragraph (7)(b).

(7) A person who holds an accessible copy made under paragraph (1) may transfer it to-

- (a) a visually impaired person entitled to have the accessible copy made under paragraph (1); or

- (b) a person who has lawful possession of the master copy and intends to transfer the accessible copy to a person falling within sub-paragraph (a).

(8) The transfer by a person (“V”) of an accessible copy made under paragraph (1) to another person (“T”) shall be an infringement of copyright by V unless V has reasonable grounds for believing that T is a person falling within paragraph (7)(a) or (b).

- (9) If an accessible copy which would be an infringing copy but for this Article is subsequently dealt with -

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

(10) In paragraph (9), “dealt with” means sold or let for hire or offered or exposed for sale or hire or included in a broadcast or cable programme service.

## ARTICLE 40

### **Multiple copies for visually impaired persons**

- (1) If an approved body has lawful possession of a copy (“the master copy”) of the whole or part of -

- (a) a commercially published literary, dramatic, musical or artistic work; or
- (b) a commercially published edition,

it shall not be an infringement of copyright in the work, or in the typographical arrangement of the published edition, for the body to make, or supply, accessible copies for the personal use of visually impaired persons to whom the master copy is not accessible because of their impairment.

- (2) Paragraph (1) shall not apply -

- (a) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or
- (b) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.

(3) Paragraph (1) shall not apply in relation to the making of an accessible copy if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to the same or substantially the same degree.

(4) Paragraph (1) shall not apply in relation to the supply of an accessible copy to a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.

- (5) An accessible copy made under this Article shall be accompanied by -

- (a) a statement that it is made under this Article; and
- (b) a sufficient acknowledgement.

(6) If an approved body charges for supplying a copy made under this Article, the sum charged shall not exceed the cost of making and supplying the copy.

(7) An approved body making copies under this Article shall, if it is an educational establishment, ensure that the copies will be used only for its educational purposes.

(8) If the master copy is in copy-protected electronic form, any accessible copy made of it under this Article shall, so far as it is reasonably practicable to do so, incorporate the same, or equally effective, copy protection (unless the

copyright owner agrees otherwise).

(9) If an approved body continues to hold an accessible copy made under paragraph (1) when it would no longer be entitled to make or supply such a copy under that paragraph, the copy shall be treated as an infringing copy.

(10) If an accessible copy which would be an infringing copy but for this Article is subsequently dealt with -

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

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

(11) In paragraph (10), "dealt with" means sold or let for hire or offered or exposed for sale or hire or included in a broadcast or cable programme service.

## ARTICLE 41

### **Intermediate copies and records**

(1) An approved body entitled to make accessible copies under Article 40 may hold an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but only -

(a) if and so long as the approved body continues to be entitled to make accessible copies of that master copy; and

(b) for the purposes of the production of further accessible copies.

(2) An intermediate copy which is held in breach of paragraph (1) shall be treated as an infringing copy.

(3) An approved body may lend or transfer the intermediate copy to another approved body which is entitled to make accessible copies of the work or published edition under Article 40.

(4) The loan or transfer by an approved body ("A") of an intermediate copy to another person ("B") shall be an infringement of copyright by A unless A has reasonable grounds for believing that B -

(a) is another approved body which is entitled to make accessible copies of the work or published edition under Article 40; and

(b) will only use the intermediate copy for the purposes of the production of further accessible copies.

(5) If an approved body charges for lending or transferring the intermediate copy, the sum charged shall not exceed the cost of the loan or transfer.

(6) An approved body shall -

(a) keep records of accessible copies made under Article 40 and of the persons to whom they are supplied;

(b) keep records of any intermediate copy lent or transferred under this Article and of the persons to whom it is lent or transferred; and

(c) allow the copyright owner or a person acting for him, on giving reasonable notice, to inspect the records at any reasonable time.

(7) Within a reasonable time of making an accessible copy under Article 40, or lending or transferring an intermediate copy under this Article, the approved body shall -

(a) notify each relevant representative body; or

(b) if there is no such body, notify the copyright owner.

(8) For the purposes of paragraph (7)(a), a relevant representative body is a body which-



- (a) represents particular copyright owners, or owners of copyright in the type of copyright work concerned; and
  - (b) has given notice to the Committee of the copyright owners, or the classes of copyright owner, represented by it.
- (9) The requirement to notify the copyright owner under paragraph (7)(b) shall not apply if it is not reasonably possible for the approved body to ascertain the name and address of the copyright owner.

## ARTICLE 42

### **Licensing schemes**

- (1) Article 40 shall not apply to the making of an accessible copy in a particular form if -
  - (a) a licensing scheme operated by a licensing body is in force under which licences may be granted by the licensing body permitting the making and supply of copies of the copyright work in that form;
  - (b) the scheme is not unreasonably restrictive; and
  - (c) the scheme and any modification made to it have been notified to the Committee by the licensing body.
- (2) A scheme shall be unreasonably restrictive if it includes a term or condition which -
  - (a) purports to prevent or limit the steps that may be taken under Article 40 or 41; or
  - (b) has that effect.
- (3) Paragraph (2) shall not apply if -
  - (a) the copyright work is no longer published by or with the authority of the copyright owner; and
  - (b) there are reasonable grounds for preventing or restricting the making of accessible copies of the work.
- (4) If Article 40 or 41 is displaced by a licensing scheme, Articles 140 to 143 shall apply in relation to the scheme as if it were one to which those Articles applied as a result of Article 138.

## ARTICLE 43

### **Limitations, etc. following infringement of copyright**

- (1) The Committee may make an Order under this Article if it appears to it that the making of copies -
  - (a) under Article 40; or
  - (b) under a licence granted under a licensing scheme that has been notified under Article 42,has led to infringement of copyright on a scale which, in the Committee's opinion, would not have occurred if Article 40 had not been in force, or the licence had not been granted.
- (2) The Order may prohibit one or more named approved bodies, or one or more specified categories of approved body, from -
  - (a) acting under Article 40; or
  - (b) acting under a licence of a description specified in the Order.
- (3) The Order may disapply -
  - (a) the provisions of Article 40; or
  - (b) the provisions of a licence, or a licensing scheme, of a description specified in the Order,

in respect of the making of copies of a description so specified.

- (4) If the Committee proposes to make an Order it shall, before making it, consult -
  - (a) such bodies representing copyright owners as it thinks fit; and
  - (b) such bodies representing visually impaired persons as it thinks fit.
- (5) If the Committee proposes to make an Order which includes a prohibition it shall, before making it, consult -
  - (a) if the proposed Order is to apply to one or more named approved bodies, that body or those bodies;
  - (b) if it is to apply to one or more specified categories of approved body, to such bodies representing approved bodies of that category or those categories as it thinks fit.
- (6) An approved body which is prohibited by an Order from acting under a licence may not apply to the Tribunal under Article 142(1) in respect of a refusal or failure by a licensing body to grant such a licence.

#### ARTICLE 44

##### **Definitions and other supplementary provision for Articles 39 to 43**

- (1) This Article supplements Articles 39 to 43 and includes definitions for the purposes of those Articles.
- (2) A copy of a copyright work (other than an accessible copy made under Article 39 or 40) shall be taken to be accessible to a visually impaired person only if it is as accessible to him as it would be if he were not visually impaired.
- (3) “Accessible copy”, in relation to a copyright work, means a version which provides for a visually impaired person improved access to the work.
- (4) An accessible copy may include facilities for navigating around the version of the copyright work but may not include -
  - (a) changes that are not necessary to overcome problems caused by visual impairment; or
  - (b) changes which infringe the right (provided by Article 99) not to have the work subjected to derogatory treatment.
- (5) “Approved body” means an educational establishment or a body that is not conducted for profit.
- (6) “Supplying” includes lending.
- (7) “Lending”, in relation to a copy, means making it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will or may be returned.
- (8) For the purposes of paragraph (7), a loan shall not be treated as being for direct or indirect economic or commercial advantage if a charge is made for the loan which does not exceed the cost of making and supplying the copy.
- (9) The definition of “lending” in Article 25 shall not apply for the purposes of Articles 40 and 41.
- (10) “Visually impaired person” means a person -
  - (a) who is blind;
  - (b) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light;
  - (c) who is unable, through physical disability, to hold or manipulate a book; or
  - (d) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be

acceptable for reading.

(11) The Committee may by Order prescribe -

- (a) the form in which; or
- (b) the procedure in accordance with which,

any notice required under Article 41(7) or (8), or 42(1), shall be given.

#### *Education*

#### ARTICLE 45

##### **Things done for purposes of instruction or examination**

(1) Copyright in a literary, dramatic, musical or artistic work shall not be infringed by its being copied in the course of instruction or of preparation for instruction, if the copying -

- (a) is done by a person giving or receiving instruction; and
- (b) is not by means of a reprographic process.

(2) Copyright in a sound recording, film, broadcast or cable programme shall not be infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, if the copying is done by a person giving or receiving instruction.

(3) Copyright shall not be infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions.

(4) Paragraph (3) shall not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.

(5) Where a copy which would otherwise be an infringing copy is made in accordance with this Article but is subsequently sold or let for hire, or offered or exposed for sale or hire, it shall be treated as an infringing copy for the purposes of that transaction, and if that transaction infringes copyright, for all subsequent purposes.

#### ARTICLE 46

##### **Anthologies for educational use**

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

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

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

(2) Paragraph (1) shall not authorize the inclusion of more than two excerpts from copyright works by the same author in collections published by the same publisher over any period of 5 years.

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

- (a) shall be taken to include excerpts from works by him in collaboration with another; and
- (b) if the passage in question is from one of those works, shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.

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

#### ARTICLE 47

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

(1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment -

- (a) by a teacher or pupil in the course of the activities of the establishment; or
- (b) at the establishment by any person for the purposes of instruction,

shall not be a public performance for the purposes of infringement of copyright.

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

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

#### ARTICLE 48

##### **Recording by educational establishments of broadcasts and cable programmes**

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

(2) This Article shall not apply if, or to the extent that, there is a licensing scheme certified for the purposes of this Article under Article 172 providing for the grant of licences.

(3) Where a copy which would otherwise be an infringing copy is made in accordance with this Article but is subsequently sold or let for hire, or offered or exposed for sale or hire, it shall be treated as an infringing copy for the purposes of that transaction, and if that transaction infringes copyright, for all subsequent purposes.

#### ARTICLE 49

##### **Reprographic copying by educational establishments of passages from published works**

(1) Reprographic copies of passages from published literary, dramatic or musical works may, to the extent permitted by this Article, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work, or in the typographical arrangement.

(2) Not more than one per cent of any work may be copied by or on behalf of an establishment by virtue of this Article in any quarter, that is, in any period 1st January to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October to 31st December.

(3) Copying shall not be authorized by this Article if, or to the extent that, licences are available authorizing the copying in question and the person making the copies knew or ought to have been aware of that fact.

(4) The terms of a licence granted to an educational establishment authorizing the reprographic copying for the purposes of instruction of passages from published literary, dramatic or musical works shall be of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted under this Article.

(5) Where a copy which would otherwise be an infringing copy is made in accordance with this Article but is subsequently sold or let for hire, or offered or exposed for sale or hire, it shall be treated as an infringing copy for the

purposes of that transaction and if that transaction infringes copyright, for all subsequent purposes.

## ARTICLE 50

### **Lending of copies by educational establishments**

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

#### *Libraries and archives*

## ARTICLE 51

### **Libraries and archives: introductory**

(1) In Articles 52 to 57 -

- (a) references in any provision to a prescribed library or archive are to a library or archive of a description prescribed for the purposes of that provision by the Committee by Order; and
- (b) references in any provision to the prescribed conditions are to the conditions prescribed by the Committee by Order.

(2) For the purposes of any of those provisions the Order may prescribe a description of library or archive in any place in the British Islands, or in any other country to which Part I of the Copyright, Designs and Patents Act 1988 of the United Kingdom extends, by reference to a description of library or archive from time to time prescribed by Regulations for the purposes of the corresponding provision of that Part.

(3) The Order may provide that, where a librarian or archivist is required to be satisfied as to any matter before making or supplying a copy of a work -

- (a) he may rely on a signed declaration as to that matter by the person requesting the copy, unless he is aware that it is false in a material particular; and
- (b) in any prescribed case, he shall not make or supply a copy in the absence of a signed declaration in the form that is prescribed.

(4) Where a person requesting a copy 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 -

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

(5) References in this Article and in Articles 52 to 57, to the librarian or archivist include a person acting on his behalf.

## ARTICLE 52

### **Copying by librarians: articles in periodicals**

(1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in the text, in any illustrations accompanying the text or in the typographical arrangement.

(2) The prescribed conditions shall include the following -

- (a) that copies shall be supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
- (b) that no person shall be furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical; and

- (c) that persons to whom copies are supplied shall be required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

#### ARTICLE 53

##### **Copying by librarians: parts of published works**

(1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply from a published edition a copy of a literary, dramatic, or musical work (other than an article in a periodical) without infringing any copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.

- (2) The prescribed conditions shall include the following -
  - (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
  - (b) that no person is furnished with more than one copy of the same material or with a copy of more than a reasonable proportion of any work; and
  - (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

#### ARTICLE 54

##### **Restriction on production of multiple copies of the same material**

(1) Orders for the purposes of Articles 52 and 53 shall contain provision to the effect that a copy shall be supplied only to a person satisfying the librarian that his requirement is not related to any similar requirement of another person.

- (2) The Orders may provide -
  - (a) that requirements shall be regarded as similar if the requirements are for copies of substantially the same material at substantially the same time and for substantially for the same purpose; and
  - (b) that requirements of persons shall be regarded as related if those persons receive instruction to which the material is relevant at the same time and place.

#### ARTICLE 55

##### **Copying by librarians: supply of copies to other libraries**

(1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply to another prescribed library a copy of -

- (a) an article in a periodical; or
- (b) the whole or part of a published edition of a literary, dramatic or musical work,

without infringing any copyright in the text of the article or in the work, in any illustrations accompanying it or in the typographical arrangement.

(2) Paragraph (1) shall not apply if at the time the copy is made the librarian making it knows, or could by reasonable inquiry ascertain, the name and address of a person entitled to authorize the making of the copy.

#### ARTICLE 56

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

- (1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied

with, make a copy from any item in the permanent collection of the library or archive -

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

without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying that work or, in the case of a published edition, in the typographical arrangement.

(2) The prescribed conditions shall include provision for restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question to fulfil that purpose.

#### ARTICLE 57

##### **Copying by librarians or archivists: certain unpublished works**

(1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or any illustrations accompanying it.

(2) This Article shall not apply if the work had been published before the document was deposited in the library or archive or the copyright owner has prohibited copying of the work and at the time the copy is made the librarian or archivist making it is, or ought to be, aware of that fact.

(3) The prescribed conditions shall include the following -

- (a) that copies are supplied only to persons satisfying the librarian or archivist that they require them for purposes of research or private study and will not use them for any other purpose;
- (b) that no person is furnished with more than one copy of the same material; and
- (c) that persons to whom copies are supplied are required to pay for them a sum of not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

#### ARTICLE 58

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

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

#### *Public administration*

#### ARTICLE 59

##### **States and judicial proceedings**

(1) Copyright shall not be infringed by anything done for the purposes of proceedings of the States or judicial proceedings.

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

#### ARTICLE 60

##### **Committees of Inquiry and statutory inquiries**

(1) Copyright shall not be infringed by anything done for the purposes of the proceedings of a Committee of

Inquiry or a statutory inquiry.

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

(3) Copyright in a work shall not be infringed by the issue to the public of copies of the report of a Committee of Inquiry or a statutory inquiry containing the work or material from it.

## ARTICLE 61

### **Material open to public inspection or on official register**

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

(2) Where material is open to public inspection pursuant to a statutory requirement, copyright shall not be infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.

(3) Where material which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contains information about matters of general scientific, technical, commercial or economic interest, copyright shall not be infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purposes of disseminating that information.

(4) The Committee may by Order provide that paragraph (1), (2) or (3) shall, in the cases specified in the Order apply only to copies marked in a specified manner.

(5) The Committee may by Order provide that paragraphs (1) to (3) shall apply, to the extent and with any modifications specified in the Order -

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

(i) an international organization specified in the Order, or

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

(b) to a register maintained by an international organization specified in the Order,

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

(6) In this Article -

“appropriate person” means the person required to make the material open to public inspection or the person maintaining the register;

“statutory register” means a register maintained in pursuance of a statutory requirement; and

“statutory requirement” means a requirement imposed by or under a statutory provision.

## ARTICLE 62

### **Material communicated to the Crown or the States in the course of public business**

(1) This Article shall apply where a literary, dramatic, musical or artistic work has in the course of public business been communicated to the Crown or the States for any purpose by or with the licence of the copyright owner and a document or other material thing recording or embodying the work is owned by or in the custody or control of the Crown or



the States.

(2) The Crown or the States may, for the purpose for which the work was communicated to it or them, or any related purpose which could reasonably have been anticipated by the copyright owner, copy the work and issue copies of the work to the public without infringing any copyright in the work.

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

(4) In paragraph (1) “public business” includes any activity carried on by the Crown or the States.

(5) This Article shall have effect subject to any agreement to the contrary between the Crown or the States and the copyright owner.

## ARTICLE 63

### **Public records**

Material which is comprised in records which are open to public inspection at the Public Registry, the Jersey Museum or at the Office of the Superintendent Registrar may be copied, and a copy may be supplied to any person, by or with the authority of the Judicial Greffier, the Director of the Museum, or the Superintendent Registrar, respectively, without infringement of copyright.

## ARTICLE 64

### **Acts done under statutory authority**

(1) Where the doing of a particular act is specifically authorized by a statutory provision, whenever made, unless the statutory provision provides otherwise, the doing of that act shall not infringe copyright.

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

### *Computer programs: lawful users*

## ARTICLE 65

### **Back up copies**

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

(2) For the purposes of this Article and Articles 66 and 67 a person shall be a lawful user of a computer program if (whether under a licence to do any acts restricted by the copyright in the program or otherwise), he has a right to use the program.

(3) Where an act is permitted under this Article, it shall be irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (those terms being, by virtue of Article 218, void).

## ARTICLE 66

### **Decompilation**

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

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

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

(that is, to “decompile” it), provided that the conditions in paragraph (2) are met.

- (2) The conditions referred to in paragraph (1) are that -
- (a) it is necessary to decompile the program to obtain the information necessary to create an independent program which can be operated with the program decompiled or with another program (“the permitted objective”); and
  - (b) the information so obtained is not used for any purpose other than the permitted objective.
- (3) In particular, the conditions in paragraph (2) shall not be met if the lawful user-
- (a) has readily available to him the information necessary to achieve the permitted objective;
  - (b) does not confine the decompiling to such acts as are necessary to achieve the permitted objective;
  - (c) supplies the information obtained by the decompiling to any person to whom it is not necessary to supply it in order to achieve the permitted objective; or
  - (d) uses the information to create a program which is substantially similar in its expression to the program decompiled or to do any act restricted by copyright.
- (4) Where an act is permitted under this Article, it shall be irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (those terms being, by virtue of Article 218, void).

#### ARTICLE 67

##### **Other acts permitted to lawful users**

- (1) It shall not be an infringement of copyright for a lawful user of a copy of a computer program to copy or adapt it, provided that the copying or adapting -
- (a) is necessary for his lawful use; and
  - (b) is not prohibited under any term or condition of an agreement regulating the circumstances in which his use is lawful.
- (2) It may, in particular, be necessary for the lawful use of a computer program to copy it or adapt it for the purpose of correcting errors in it.
- (3) This Article shall not apply to any copying or adapting permitted under Article 65 or 66.

#### ARTICLE 68

##### **Acts permitted in relation to databases**

- (1) It shall not be an infringement of copyright in a database for a person who has a right to use the database or any part of the database (whether under a licence to do any of the acts restricted by the copyright in the database or otherwise) to do, in the exercise of that right, anything which is necessary for the purposes of access to and use of the contents of the database or of that part of the database.
- (2) Where an act which would otherwise infringe copyright in a database is permitted under this Article, it shall be irrelevant whether or not there exists any term or condition in any agreement which purports to prohibit or restrict the act (those terms being, by virtue of Article 219, void).

#### *Designs*

#### ARTICLE 69

##### **Design documents and models**

- (1) It shall not be an infringement of any copyright in a design document or model recording or embodying a

design for anything other than an artistic work or a typeface to make an article to the design or to copy an article made to the design.

(2) It shall not be an infringement of the copyright to issue to the public, or include in a film, broadcast or cable programme service, anything the making of which was, by virtue of paragraph (1), not an infringement of that copyright.

(3) In this Article -

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

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

#### ARTICLE 70

##### **Effect of exploitation of design derived from artistic work**

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

- (a) making by an industrial process articles falling to be treated for the purposes of this Law as copies of the work; and
- (b) marketing those articles, in the Island or elsewhere.

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

(3) Where only part of an artistic work is exploited as described in paragraph (1), paragraph (2) shall apply only in relation to that part.

(4) The Committee may by Order make provision -

- (a) as to the circumstances in which an article, or any description of article, is to be regarded for the purposes of this Article as made by an industrial process; and
- (b) excluding from the operation of this Article any articles of a primarily literary or artistic character as it thinks fit.

(5) In this Article -

- (a) references to articles do not include films; and
- (b) references to the marketing of an article are to its being sold or let for hire or offered or exposed for sale or hire.

#### ARTICLE 71

##### **Things done in reliance on registration of design**

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

- (a) in pursuance of an assignment or licence made or granted by a person registered under the Registered Designs (Jersey) Law 1957 as the proprietor of a corresponding design; and
- (b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation of the registration or for rectifying the relevant entry in the register of designs,

notwithstanding that the person registered as the proprietor was not the proprietor of the design for the purposes of the

Registered Designs (Jersey) Law 1957.

(2) In paragraph (1) a“corresponding design”, in relation to an artistic work means a design within the meaning of the Registered Designs (Jersey) Law 1957 which if applied to an article would produce something which would be treated for the purposes of this Law as a copy of the artistic work.

### *Typefaces*

#### ARTICLE 72

##### **Use of typeface in ordinary course of printing**

- (1) It shall not be an infringement of copyright in an artistic work consisting of the design of a typeface -
  - (a) to use the typeface in the ordinary course of typing, composing text, typesetting or printing;
  - (b) to possess an article for the purpose of such use; or
  - (c) to do anything in relation to material produced by such use,

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

(2) Articles 31, 120, 121, 128(2) and 129 shall apply in relation to persons making, importing or dealing with articles specifically designed or adapted for producing material in a particular typeface, or possessing those articles for the purpose of dealing with them, as if the production of material as mentioned in paragraph (1) did infringe copyright in the artistic work consisting of the design of the typeface.

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

#### ARTICLE 73

##### **Articles for producing material in particular typeface**

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

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

(3) In paragraph (1)“marketed” means sold, let for hire or offered or exposed for sale or hire, in the Island or elsewhere.

### *Works in electronic form*

#### ARTICLE 74

##### **Transfer of copies of works in electronic form**

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

- (2) If there are no express terms -
  - (a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer; or
  - (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done without infringement of copyright by a transferee; but any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall be treated as an infringing copy for all purposes after the transfer.

(3) Paragraph (2) shall apply where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

(4) This Article shall apply on a subsequent transfer, with the substitution for references in paragraph (2) to the purchaser of references to the subsequent transferor.

*Miscellaneous: literary, dramatic, musical and artistic works*

## ARTICLE 75

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

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

- (a) it is not possible by reasonable inquiry to ascertain the identity of the author; and
- (b) it is reasonable to assume -
  - (i) that copyright has expired, or
  - (ii) that the author died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Paragraph (1)(b)(ii) shall not apply in relation to -

- (a) a work in which Crown or States copyright subsists; or
- (b) a work in which copyright originally vested in an international organization by virtue of Article 215 and in respect of which an Order under that Article specifies a copyright period longer than 70 years.

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

- (a) the reference in paragraph (1) to its being possible to ascertain the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors; and
- (b) the reference in paragraph (1)(b)(ii) to the author having died shall be construed as a reference to all the authors having died.

## ARTICLE 76

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

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

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

it shall not be an infringement of any copyright in the words as a literary work to use the record or material taken from it (or to copy the record, or any of the material, and use the copy) for that purpose, if the conditions in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that -

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

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

#### ARTICLE 77

##### **Public reading or recitation**

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

(2) Copyright in a work shall not be infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service, of a reading or recitation which by virtue of paragraph (1) does not infringe copyright in the work, provided that the recording, broadcast or cable programme consists mainly of material in relation to which it is not necessary to rely on that paragraph.

#### ARTICLE 78

##### **Abstracts of scientific or technical articles**

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

(2) This Article shall not apply if, or to the extent that, there is a licensing scheme certified for the purposes of this Article under Article 172 providing for the grant of licences.

#### ARTICLE 79

##### **Recordings of folk-songs**

(1) A sound recording of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body, without infringing any copyright in the words as a literary work or in the accompanying musical work, if the conditions in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that -

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

(3) Copies of a sound recording made in reliance on paragraph (1) and included in an archive maintained by a designated body may, if the prescribed conditions are met, be made and supplied by the archivist without infringing copyright in the recording or the works included in it.

(4) The prescribed conditions shall include the following -

- (a) that copies are only supplied to persons satisfying the archivist that they require them for purposes of research or private study and will not use them for any other purpose; and
- (b) that no person is furnished with more than one copy of the same recording.

(5) In this Article -

- (a) “designated” means designated for the purposes of this Article by Order of the Committee, which shall not designate a body unless satisfied that it is not established or conducted for profit;
- (b) “prescribed” means prescribed for the purposes of this Article by Order of the Committee; and
- (c) references to the archivist include a person acting on his behalf.

#### ARTICLE 80

##### **Representation of certain artistic works on public display**

- (1) This Article shall apply to -
  - (a) buildings; and
  - (b) sculptures, models for buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.
- (2) The copyright in any of those works shall not be infringed by -
  - (a) making a graphic work representing it;
  - (b) making a photograph or film of it;
  - (c) broadcasting or including in a cable programme service, a visual image of it; or
  - (d) the issue to the public of copies, or the broadcasting or inclusion in a cable programme service, of anything the making of which was, by virtue of this Article, not an infringement of the copyright.

#### ARTICLE 81

##### **Advertisement of sale of artistic work**

- (1) It shall not be an infringement of copyright in an artistic work to copy it, or to issue copies to the public, for the purpose of advertising the sale of the work.
- (2) Where a copy which would otherwise be an infringing copy is made in accordance with this Article but is subsequently sold or let for hire, offered or exposed for sale or hire, exhibited in public or distributed for any other purpose, it shall be treated as an infringing copy for the purposes of that transaction, and if that transaction infringes copyright, for all subsequent purposes.

#### ARTICLE 82

##### **Making of subsequent works by same artist**

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

#### ARTICLE 83

##### **Reconstruction of buildings**

Anything done for the purposes of reconstructing a building shall not infringe any copyright -

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

*Miscellaneous: lending of works and playing of sound recordings*

## ARTICLE 84

### **Lending to public of copies of certain works**

(1) The Committee may by Order provide that in cases specified in the Order the lending to the public of copies of literary, dramatic, musical or artistic works, sound recordings or films shall be treated as licensed by the copyright owner subject only to the payment of a reasonable royalty or other payment as agreed or determined in default of agreement by the Tribunal.

(2) An Order under paragraph (1) shall not apply if, or to the extent that, there is a licensing scheme certified for the purposes of this Article under Article 172 providing for the grant of licences.

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

(4) Nothing in this Article shall affect any liability under Article 30 in respect of the lending of infringing copies.

*Miscellaneous: films and sound recordings*

## ARTICLE 85

### **Films: acts permitted on assumptions as to expiry of copyright etc.**

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

(a) it is not possible by reasonable inquiry to ascertain the identity of any of the persons referred to in Article 18 (2)(a) to (d); and

(b) it is reasonable to assume -

(i) that copyright has expired, or

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

(2) Paragraph (1)(b)(ii) shall not apply in relation to -

(a) a film in which Crown or States copyright subsists; or

(b) a film in which copyright originally vested in an international organization by virtue of Article 215 and in respect of which an Order under that Article specifies a copyright period longer than 70 years.

## ARTICLE 86

### **Playing of sound recordings for purposes of club, society, etc.**

(1) It shall not be an infringement of the copyright in a sound recording to play it as part of the activities of, or for the benefit of, a club, society or other organization if the conditions in paragraph (2) are met.

(2) The conditions are -

(a) that the organization 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 recording is to be heard are applied solely for the purposes of the organization.

*Miscellaneous: broadcasts and cable programmes*

## ARTICLE 87



### **Incidental recording for purposes of broadcast or cable programme**

(1) This Article shall apply where by virtue of a licence or assignment of copyright a person is authorized to broadcast or include in a cable programme service -

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

(2) The authorized person shall by virtue of this Article be treated as licensed by the owner of the copyright in the work to do or authorize any of the following for the purposes of the broadcast or cable programme -

- (a) in the case of a literary, dramatic or musical work, or an adaptation of that work, to make a sound recording or film of the work or adaptation;
- (b) in the case of an artistic work, to take a photograph or make a film of the work; and
- (c) in the case of a sound recording or film, to make a copy of it.

(3) The licence referred to in paragraph (2) shall be subject to the condition that the recording, film, photograph or copy in question -

- (a) shall not be used for any other purpose; and
- (b) shall be destroyed within 28 days of being first used for broadcasting the work or including it in a cable programme service.

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

- (a) for the purposes of any use in breach of the condition mentioned in paragraph (3)(a); and
- (b) for all purposes after that condition or the condition mentioned in paragraph (3)(b) is broken.

### **ARTICLE 88**

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

(1) Copyright shall not be infringed by the making or use by the British Broadcasting Corporation, for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.

(2) Copyright shall not be infringed by -

- (a) the making by or with the authority of, or the use by, the Independent Television Commission, for the purpose of maintaining supervision over programmes included in services licensed under Part I of the Broadcasting Act 1990 of the United Kingdom as extended to the Island by the Broadcasting Act 1990 (Jersey Order 1991 and the Broadcasting Act 1990 (Jersey) (No. 2) Order 1991, of recordings of those programmes; or
- (b) anything done under or in pursuance of -
  - (i) a condition included in a licence by virtue of section 11(2)(a) of that Act, or
  - (ii) a condition included in a licence by virtue of section 146 of that Act; or
- (c) anything done by any person for the purpose of complying with any obligation imposed on him by or under section 155 of that Act.

### **ARTICLE 89**

### **Recording for purposes of time-shifting**

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

#### ARTICLE 90

### **Photographs of television broadcasts or cable programmes**

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 a copy of that photograph, shall not infringe any copyright in the broadcast or cable programme or in any film included in it.

#### ARTICLE 91

### **Free public showing or playing of broadcast or cable programme**

(1) The showing or playing in public of a broadcast or cable programme to an audience who have not paid for admission to the place where the broadcast or cable programme is to be seen or heard shall not infringe any copyright in the broadcast or cable programme or any sound recording or film included in it.

(2) The audience shall be treated as having paid for admission to a place -

(a) if they have paid for admission to a place of which that place forms part; or

(b) if goods or services are supplied at that place (or a place of which it forms part) -

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

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

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

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

(b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts or cable programmes is only incidental to the main purposes of the club or society.

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

#### ARTICLE 92

### **Reception and re-transmission of broadcast in cable programme service**

(1) This Article shall apply where a broadcast made from a place in the Island or the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.

(2) The copyright in the broadcast shall not be infringed if, and to the extent that, the broadcast is made for reception in the area in which the cable programme service is provided and is not a satellite transmission or an encrypted transmission.

(3) The copyright in any work included in the broadcast is not infringed if, and to the extent that, the broadcast is made for reception in the area in which the cable programme service is provided, but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted as a programme in a cable

programme service shall be taken into account in assessing the damages for that infringement.

#### ARTICLE 93

##### **Provision of sub-titled copies of broadcast or cable programme**

(1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them.

(2) In paragraph (1) “designated” means designated for the purposes of this Article by Order of the Committee, which shall not designate a body unless satisfied that it is not established or conducted for profit.

(3) This Article shall not apply if, or to the extent that, there is a licensing scheme certified for the purposes of this Article under Article 172 providing for the grant of licences.

#### ARTICLE 94

##### **Recording for archival purposes**

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

(2) In paragraph (1) “designated” means designated for the purposes of this Article by Order of the Committee, who shall not designate a body unless satisfied that it is not established or conducted for profit.

##### *Adaptations*

#### ARTICLE 95

##### **Adaptations**

An act which by virtue of this Part may be done without infringing copyright in a literary, dramatic or musical work shall not, where that work is an adaptation, infringe any copyright in the work from which the adaptation was made.

#### *PART 5*

#### MORAL RIGHTS

##### *Right to be identified as author or director*

#### ARTICLE 96

##### **Right to be identified as author or director**

(1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, shall have the right to be identified as the author or director of the work in the circumstances mentioned in this Article, but the right shall not be infringed unless it has been asserted in accordance with Article 97.

(2) The author of a literary work (other than words intended to be sung or spoken with music) or a dramatic work shall have the right to be identified whenever -

- (a) the work is published commercially, performed in public, broadcast or included in a cable programme service; or
- (b) copies of a film or sound recording including the work are issued to the public,

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

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

- (a) whenever the work is published commercially;
- (b) copies of a sound recording of the work are issued to the public; or
- (c) a film of which the sound-track includes the work is shown in public or copies of that film are issued to the public,

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

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

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

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

(6) The director of a film shall have the right to be identified whenever the film is shown in public, broadcast or included in a cable programme service or copies of the film are issued to the public.

(7) The right of the author or director under this Article shall be -

- (a) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified, clearly and reasonably prominently, in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy;
- (b) in the case of identification on a building, to be identified, clearly and reasonably prominently, by appropriate means visible to persons entering or approaching the building; and
- (c) in any other case, to be identified, clearly and reasonably prominently, in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, exhibition, showing, broadcast or cable programme in question.

(8) If the author or director in asserting his right to be identified specifies a pseudonym, initials or some other particular form of identification, that form shall be used, otherwise any reasonable form of identification may be used.

(9) This Article shall have effect subject to Article 98.

## ARTICLE 97

### **Requirement that right be asserted**

(1) A person shall not infringe the right conferred by Article 96 by doing any of the acts mentioned in that Article unless the right has been asserted in accordance with the following provisions of this Article so as to bind him in relation to that act.

(2) The right may be asserted generally, or in relation to any specified act or description of acts -

- (a) on an assignment of copyright in the work, by including in the instrument effecting the assignment a

statement that the author or director asserts in relation to that work his right to be identified; or

- (b) by instrument in writing signed by the author or director.
- (3) The right may also be asserted in relation to the public exhibition of an artistic work -
  - (a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached; or
  - (b) by including in a licence by which the author or other first owner of copyright authorizes the making of copies of the work a statement signed by or on behalf of the person granting the licence that the author asserts his right to be identified in the event of the public exhibition of a copy made in pursuance of the licence.
- (4) The persons bound by an assertion of the right under paragraph (2) or (3) are -
  - (a) in the case of an assertion under paragraph (2)(a), the assignee and anyone claiming through him, whether or not he has notice of the assertion;
  - (b) in the case of an assertion under paragraph (2)(b), anyone to whose notice the assertion is brought;
  - (c) in the case of an assertion under paragraph (3)(a), anyone into whose hands that original or copy comes whether or not the identification is still present or visible; and
  - (d) in the case of an assertion under paragraph (3)(b), the licensee and anyone into whose hands a copy made in pursuance of the licence comes, whether or not he has notice of the assertion.
- (5) In an action for infringement of the right the Court shall, in considering remedies, take into account any delay in asserting the right.

## ARTICLE 98

### **Exceptions to right**

- (1) The right conferred by Article 96 shall be subject to the following exceptions.
- (2) The right shall not apply in relation to -
  - (a) a computer program;
  - (b) the design of a typeface; or
  - (c) any computer-generated work.
- (3) The right shall not apply to anything done by or with the authority of the copyright owner where copyright in the work originally vested -
  - (a) in the author's employer by virtue of Article 15(2); or
  - (b) in the director's employer by virtue of Article 13(2)(b).
- (4) The right shall not be infringed by an act which by virtue Articles 37, 38, 45(3), 59, 60(1) or (2), 69, 70, 75 or 85 would not infringe copyright in the work -
- (5) The right shall not apply in relation to any work made for the purpose of reporting current events.
- (6) The right shall not apply in relation to the publication in a newspaper, magazine or similar periodical or an encyclopaedia, dictionary, yearbook or other collective work of reference, of a literary, dramatic, musical or artistic work made for the purposes of that publication or made available with the consent of the author for the purposes of that publication.

(7) The right shall not apply in relation to a work in which Crown copyright or States copyright subsists, a work to the copyright in which Her Majesty was originally entitled by virtue of Article 210, or a work in which copyright originally vested in an international organization by virtue of Article 215, unless the author or director has previously been so identified in or on published copies of the work.

*Right to object to derogatory treatment of work*

ARTICLE 99

**Right to object to derogatory treatment of work**

(1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, shall have the right in the circumstances described in this Article not to have his work subjected to derogatory treatment.

(2) For the purposes of this Article -

(a) “treatment” of a work means any addition to, deletion from or alteration to or adaptation of the work, other than -

(i) a translation of a literary or dramatic work, or

(ii) an arrangement or transcription of a musical work involving no more than a change of key or register;  
and

(b) the treatment of work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director,

and in the following provision of this Article references to a derogatory treatment of a work shall be construed accordingly.

(3) In the case of a literary, dramatic or musical work the right shall be infringed by a person who -

(a) publishes commercially, performs in public, broadcasts or includes in a cable programme service a derogatory treatment of the work; or

(b) issues to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.

(4) In the case of an artistic work the right shall be infringed by a person who -

(a) publishes commercially or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme service a visual image of a derogatory treatment of the work;

(b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of that film; or

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

(5) Paragraph (4) shall not apply to a work of architecture in the form of a building, but where the author of that work is identified on the building and it is the subject of derogatory treatment, he has the right to require the identification to be removed.

(6) In the case of a film, the right shall be infringed by a person who -

(a) shows in public, broadcasts or includes in a cable programme service a derogatory treatment of the film; or

(b) issues to the public copies of a derogatory treatment of the film.

(7) The right conferred by this Article shall extend to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.

- (8) This Article shall have effect subject to Articles 100 and 101.

## ARTICLE 100

### **Exceptions to right**

- (1) The right conferred by Article 99 shall be subject to the exceptions referred to in paragraphs (2) to (6).
- (2) The right shall not apply to a computer program or to any computer-generated work.
- (3) The right shall not apply in relation to any work made for the purpose of reporting current events.
- (4) The right shall not apply in relation to the publication in -
- (a) a newspaper, magazine or similar periodical; or
- (b) an encyclopaedia, dictionary, yearbook or other collective work of reference,

of a literary, dramatic, musical or artistic work made for the purposes of that publication or made available with the consent of the author for the purposes of that publication or in relation to any subsequent exploitation elsewhere of that work without any modification of the published version.

- (5) The right shall not be infringed by an act which by virtue of Article 75 or 85 would not infringe copyright.
- (6) The right shall not be infringed by anything done for the purpose of -
- (a) avoiding the commission of an offence;
- (b) complying with a duty imposed by or under an enactment; or
- (c) in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste or decency or which is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling,

if, where the author or director is identified at the time of the relevant act or has previously been identified in or on published copies of the work, there is a sufficient disclaimer.

## ARTICLE 101

### **Qualification of right in certain cases**

- (1) This Article shall apply to -
- (a) works in which copyright originally vested in the author's employer by virtue of Article 15(2) or in the director's employer by virtue of Article 13(2)(b);
- (b) works in which Crown copyright or States copyright subsists; and
- (c) works in which copyright originally vested in an international organization by virtue of Article 215.

(2) The right conferred by Article 99 shall not apply to anything done in relation to that work by or with the authority of the copyright owner unless the author or director -

- (a) is identified at the time of the relevant act; or
- (b) has previously been identified in or on published copies of the work,

and where in that case the right does apply, it shall not be infringed if there is a sufficient disclaimer.

## ARTICLE 102

### **Infringement of right by possessing or dealing with infringing article**

- (1) The right conferred by Article 99 shall also be infringed by a person who -
  - (a) possesses in the course of a business;
  - (b) sells or lets for hire, or offers or exposes for sale or hire;
  - (c) in the course of a business exhibits in public or distributes; or
  - (d) distributes otherwise than in the course of a business so as to affect prejudicially the honour or reputation of the author or director,

an article which is, and which he knows or has reason to believe is, an infringing article.

- (2) An “infringing article” means a work or a copy of a work which -
  - (a) has been subjected to derogatory treatment within the meaning of Article 99; and
  - (b) has been or is likely to be the subject of any of the acts mentioned in that Article in circumstances infringing that right.

#### *False attribution of work*

#### ARTICLE 103

#### **False attribution of work**

- (1) A person shall have the right in the circumstances mentioned in this Article -
  - (a) not to have a literary, dramatic, musical or artistic work falsely attributed to him as author; and
  - (b) not to have a film falsely attributed to him as director,

and in this Article, an “attribution”, in relation to such a work, means a statement (express or implied) as to who is the author or director.

- (2) The right shall also be infringed by a person who -
  - (a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution; or
  - (b) exhibits in public an artistic work, or a copy of an artistic work, in or on which there is a false attribution.

(3) The right shall also be infringed by a person who in the case of a literary, dramatic, or musical work, performs the work in public, broadcasts it or includes it in a cable programme service as being the work of a person or in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service as being directed by a person, knowing or having reason to believe that the attribution is false.

(4) The right shall also be infringed by the issue to the public or public display of material containing a false attribution in connection with any of the acts mentioned in paragraph (2) or (3).

(5) The right shall be infringed by a person who in the course of a business possesses or deals with a copy of a work of any of the descriptions mentioned in paragraph (1) in or on which there is a false attribution or in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it knowing or having reason to believe that there is that attribution and that it is false.

(6) In the case of an artistic work the right shall be infringed by a person who in the course of a business deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author, or deals with a copy of that work as being a copy of the unaltered work of the author, knowing or having reason to believe that that is not the case.



(7) References in this Article to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public, or distributing.

(8) This Article shall apply where, contrary to the fact, a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person or a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work as it applies where the work is falsely attributed to a person as author.

*Right to privacy of certain photographs and films*

ARTICLE 104

**Right to privacy of certain photographs and films**

(1) A person who for private and domestic purposes commissions the taking of a photograph or the making of a film shall have, where copyright subsists in the resulting work, the right not to have -

- (a) copies of the work issued to the public;
- (b) the work exhibited or shown in public; or
- (c) the work broadcast or included in a cable programme service,

and, except as mentioned in paragraph (2), a person who does or authorizes the doing of any of those acts shall infringe that right.

(2) The right shall not be infringed by an act which by virtue of Articles 38, 59, 60, 64, 75 or 85 would not infringe copyright in the work.

*Supplementary*

ARTICLE 105

**Duration of rights**

(1) The rights conferred by Articles 96, 99 and 104 shall continue to subsist so long as copyright subsists in the work.

(2) The right conferred by Article 103 shall continue to subsist until 20 years after a person's death.

ARTICLE 106

**Consent and waiver of rights**

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

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

(3) A waiver under paragraph (2) -

(a) may relate to a specific work, to works of a specified description or to works generally, and may relate to existing or future works; and

(b) may be conditional or unconditional and may be expressed to be subject to revocation,

and if made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

(4) Nothing in this 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 mentioned in paragraph (1).

## ARTICLE 107

### **Application of provisions to joint works**

(1) The right conferred by Article 96 shall be, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author and must be asserted in accordance with Article 97 by each joint author in relation to himself.

(2) The right conferred by Article 99 shall be, in the case of a work of joint authorship, a right of each joint author and his right is satisfied if he consents to the treatment in question.

(3) A waiver under Article 106 of those rights by one joint author shall not affect the rights of the other joint authors.

(4) The right conferred by Article 103 shall be infringed, in the circumstances mentioned in that Article-

(a) by any false statement as to the authorship of a work of joint authorship; and

(b) by the false attribution of joint authorship in relation to a work of sole authorship,

and that false attribution shall infringe the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed.

(5) Paragraphs (1) to (4) shall also apply (with any necessary adaptations) in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship, and a film is "jointly directed" if it is made by the collaboration of two or more directors and the contribution of each director is not distinct from that of the other director or directors.

(6) The right conferred by Article 104 shall be, in the case of a work made in pursuance of a joint commission, a right of each person who commissioned the making of the work, so that -

(a) the right of each is satisfied if he consents to the act in question; and

(b) a waiver under Article 106 by one of them does not affect the rights of the others.

## ARTICLE 108

### **Application of provisions to parts of works**

(1) The rights conferred by Articles 96 and 104 shall apply in relation to the whole or any substantial part of a work.

(2) The right conferred by Articles 99 and 103 shall apply in relation to the whole or any part of a work.

## *PART 6*

### DEALINGS WITH RIGHTS IN COPYRIGHT WORKS

#### *Copyright*

## ARTICLE 109

### **Assignment and licences**

(1) Copyright shall be transmissible by assignment, by testamentary disposition or by operation of law, as moveable property.

(2) An assignment or other transmission of copyright may be partial so as to apply -

- (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do;
- (b) to part, but not the whole, of the period for which the copyright is to subsist.
- (3) An assignment of copyright shall not be effective unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted by a copyright owner shall be binding on every successor in title to his interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence, or a person deriving title from that purchaser and references in this Law to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

#### ARTICLE 110

##### **Prospective ownership of copyright**

(1) Where by an agreement made in relation to future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person, then if, on the copyright coming into existence, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in the title by virtue of this paragraph.

(2) In this Law -

“future copyright” means copyright which will or may come into existence in respect of a future work or class of works or on the occurrence of a future event; and

“prospective owner” shall be construed accordingly and includes a person who is prospectively entitled to copyright by virtue of the agreement mentioned paragraph (1).

(3) A licence granted by a prospective owner of copyright shall be binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from that purchaser, and references in this Law to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

#### ARTICLE 111

##### **Exclusive licences**

(1) In this Law an “exclusive licence” means a licence in writing signed by or on behalf of the copyright owner authorizing the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the copyright owner.

(2) The licensee under an exclusive licence shall have the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

#### ARTICLE 112

##### **Copyright to pass under will with unpublished work**

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

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

the bequest shall, unless a contrary intention is indicated in the testator’s will or a codicil to it, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

#### ARTICLE 113

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

(1) Where an agreement concerning film production is concluded between an author and a film producer, the author shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a copy of the author's work in the film.

(2) In this Article "author" means an author, or prospective author, of a literary, dramatic, musical or artistic work.

(3) Paragraph (1) shall not apply to any rental right in relation to the film arising by virtue of the inclusion in the film of the screenplay, the dialogue or music specifically created for and used in the film.

(4) Where this Article applies, the absence of signature by or on behalf of the author shall not exclude the operation of Article 110(1).

(5) The reference in paragraph (1) to an agreement concluded between an author and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.

(6) Article 114 shall apply where there is a presumed transfer by virtue of this Article as in the case of an actual transfer.

#### *Right to equitable remuneration where rental right transferred*

#### ARTICLE 114

#### **Right to equitable remuneration where rental right transferred**

(1) Where an author to whom this Article applies has transferred his rental right concerning a sound recording or a film to the producer of the sound recording or film, he shall retain the right to equitable remuneration for the rental.

(2) The authors to whom this Article applies are -

- (a) the author of a literary, dramatic, musical or artistic work; and
- (b) the principal director of a film.

(3) The right to equitable remuneration under this Article may not be assigned by the author except to a collecting society for the purpose of enabling it to enforce the right on his behalf, but the right shall be transmissible by testamentary disposition or by operation of law as moveable property, and it may be assigned or further transmitted by any person into whose hands it passes.

(4) Equitable remuneration under this Article shall be payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his.

(5) The amount payable by way of equitable remuneration shall be as agreed by or on behalf of the persons by and to whom it is payable, subject to Article 115.

(6) An agreement shall be of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this Article.

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

(8) In this Article a "collecting society" means a society or other organization which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration under this Article on behalf of more than one author.

#### *Reference of amount to Tribunal*

## ARTICLE 115

### **Equitable remuneration: reference of amount to Tribunal**

(1) In default of agreement as to the amount payable by way of equitable remuneration under Article 114, the person by or to whom it is payable may apply to the Tribunal to determine the amount payable.

(2) A person to or by whom equitable remuneration is payable under that Article may also apply to the Tribunal -

(a) to vary any agreement as to the amount payable; or

(b) to vary any previous determination of the Tribunal as to that matter,

but except with the special leave of the Tribunal no such application may be made within twelve months from the date of a previous determination.

An order made on an application under this paragraph has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(3) On an application under this Article the Tribunal shall consider the matter and make any order as to the method of calculating and paying equitable remuneration it determines to be reasonable in the circumstances, taking into account the importance of the contribution of the author to the film or sound recording.

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

(5) An agreement shall be of no effect in so far as it purports to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Tribunal under this Article.

### *Moral rights*

## ARTICLE 116

### **Moral rights not assignable**

The rights conferred by Part 5 shall not be assignable.

## ARTICLE 117

### **Transmission of moral rights on death**

(1) On the death of a person entitled to the right conferred by Articles 96, 99 or 104 -

(a) the right shall pass to such person as he may, by testamentary disposition, specifically direct;

(b) if there is no direction but the copyright in the work in question forms part of his estate, the right shall pass to the person to whom the copyright passes; and

(c) if, or to the extent that, the right does not pass under sub-paragraph (a) or (b) it shall be exercisable by -

(i) his executors, if he dies testate as to his movable estate, or

(ii) his administrators, if he dies intestate as to his movable estate.

(2) Where copyright forming part of a person's estate passes in part to one person and in part to another, as for example where a bequest is limited so as to apply -

(a) to one or more, but not all, of the things the copyright owner has the exclusive right to do or authorize; 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 paragraph (1) shall be correspondingly divided.

- (3) Where by virtue of paragraph (1)(a) or (b) a right becomes exercisable by more than one person -
  - (a) it may, in the case of the right conferred by Article 96, be asserted by any of them;
  - (b) it is, in the case of the right conferred by Articles 99 or 104, a right exercisable by each of them and shall be satisfied in relation to any of them if he consents to the treatment or act in question; and
  - (c) any waiver of the right in accordance with Article 106 by one of them shall not affect the rights of the others.
- (4) A consent or waiver previously given or made shall bind any person to whom a right passes by virtue of paragraph (1).
- (5) Any infringement after a person's death of the right conferred by Article 103 shall be actionable by -
  - (a) his executors, if he dies testate as to his movable estate; or
  - (b) his administrators, if he dies intestate as to his movable estate.
- (6) Any damages recovered by executors or administrators by virtue of this Article in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

#### *PART 7*

#### REMEDIES FOR INFRINGEMENT

#### *Rights and remedies of copyright owner*

#### ARTICLE 118

#### **Infringement actionable by copyright owner**

- (1) An infringement of copyright shall be actionable by the copyright owner.
- (2) In an action for infringement of copyright all relief that is available in respect of the infringement of any other property right by way of damages, injunctions, accounts or otherwise shall be available to the plaintiff.
- (3) This Article shall have effect subject to the following provisions of this Part.

#### ARTICLE 119

#### **Damages in infringement action**

- (1) Where, in an action for infringement of copyright, it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled to damages against him, but without prejudice to any other remedy.
- (2) The Court may, in an action for infringement of copyright, having regard to all the circumstances, and in particular to -
  - (a) the flagrancy of the infringement; and
  - (b) any benefit accruing to the defendant by reason of the infringement,award such additional damages as the justice of the case requires.

#### ARTICLE 120

#### **Order for delivery up**

- (1) Where a person -
  - (a) has an infringing copy of a work in his possession, custody or control in the course of a business; or
  - (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it has been or is to be used to make infringing copies,

the owner of the copyright in the work may apply to the Court for an order that the infringing copy or article be delivered up to him or to any other person the Court may direct.

(2) An application shall not be made after the end of the period specified in Article 134, and no order shall be made unless the Court makes, or it appears to the Court that there are grounds for making, an order under Article 135.

(3) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this Article shall, if an order under Article 135 is not made, retain it pending the making of an order, or the decision not to make an order, under that Article.

- (4) Nothing in this Article shall affect any other power of the Court.

#### ARTICLE 121

##### **Right to seize infringing copies, etc.**

(1) An infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under Article 120, may be seized and detained by him or a person authorized by him, but the right to seize and detain shall be exercisable subject to the following conditions and shall be subject to any decision of the Court under Article 135.

(2) Before anything is seized under this Article notice of the time and place of the proposed seizure shall be given to the Connétable of the parish in which the proposed seizure is to take place.

(3) A person may for the purpose of exercising the right conferred by this Article enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at his permanent or regular place of business, and may not use any force.

(4) At the time when anything is seized under this Article there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

- (5) In this Article -

“premises” includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft; and

“prescribed” means prescribed by Order made by the Committee.

##### *Rights and remedies of exclusive licensee*

#### ARTICLE 122

##### **Rights and remedies of exclusive licensee**

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

(2) The rights and remedies of an exclusive licensee shall be concurrent with those of the copyright owner, and references in the relevant provisions of this Law to the copyright owner shall be construed accordingly.

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

## ARTICLE 123

### **Exercise of concurrent rights**

(1) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the copyright owner or the exclusive licensee may not, without the leave of the Court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.

(2) A copyright owner or exclusive licensee who is added as a defendant in pursuance of paragraph (1) shall not be liable for any costs in the action unless he takes part in the proceedings.

(3) The above provisions shall not affect the granting of the interlocutory relief on an application by a copyright owner or exclusive licensee alone.

(4) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action -

(a) the Court shall in assessing damages take into account -

(i) the terms of the licence, and

(ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;

(b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and

(c) the Court shall, if an account of profits is directed, apportion the profits between them as the Court considers just, subject to any agreement between them,

and these provisions shall apply whether or not the copyright owner and the exclusive licensee are both parties to the action.

(5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under Article 120 or exercising the right conferred by Article 121, and the Court may on the application of the licensee make an order under Article 120 prohibiting or permitting the exercise by the copyright owner of the right conferred by Article 121, as it thinks fit having regard to the terms of the licence.

### *Remedies for infringement of moral rights*

## ARTICLE 124

### **Remedies for infringement of moral rights**

(1) An infringement of a right conferred by Part 5 shall be actionable as a breach of statutory duty owed to the person entitled to the right.

(2) In proceedings for infringement of the right conferred by Article 99 the Court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in the terms and in a manner approved by the Court, dissociating the author or director from the treatment of the work.

### *Presumptions*

## ARTICLE 125

### **Presumptions relevant to literary, dramatic, musical and artistic works**

(1) The following presumptions shall apply in proceedings brought by virtue of this Part with respect to a literary, dramatic, musical or artistic work.



(2) Where a name purporting to be that of the author appeared on copies of the work as published or on the work when it was made, the person whose name appeared shall be presumed, until the contrary is proved -

- (a) to be the author of the work; and
- (b) to have made it in circumstances not falling within Article 15(2), 210, 212 or 215.

(3) In the case of a work alleged to be a work of joint authorship, paragraph (2) shall apply in relation to each person alleged to be one of the authors.

- (4) Where no name purporting to be that of the author appeared as mentioned in paragraph (2) but -
  - (a) the work qualifies for copyright protection by virtue of Article 185; and
  - (b) a name purporting to be that of the publisher appeared on copies of the work as first published,

the person whose name appeared shall be presumed, until the contrary is proved, to have been the owner of the copyright at the time of publication.

(5) If the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed, in the absence of evidence to the contrary -

- (a) that the work is an original work; and
- (b) that the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

## ARTICLE 126

### **Presumptions relevant to sound recordings and films**

(1) In proceedings brought by virtue of this Part with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating -

- (a) that a named person was the owner of copyright in the recording at the date of issue of the copies; or
- (b) that the recording was first published in a specified year or in a specified country,

the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(2) In proceedings brought by virtue of this Part with respect to a film, where copies of the film as issued to the public bear a statement -

- (a) that a named person was the director or producer of the film;
- (b) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film;
- (c) that a named person was the owner of the copyright in the film at the date of issue of the copies; or
- (d) that the film was first published in a specified year or in a specified country,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(3) In proceedings brought by virtue of this Part with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement -

- (a) that a named person was the owner of copyright in the program at the date of issue of the copies; or

- (b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form in a specified year,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(4) The presumptions in paragraphs (1), (2) and (3) shall apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.

(5) In proceedings brought by virtue of this Part with respect to a film, where the film as shown in public, broadcast or included in a cable programme service, bears a statement -

- (a) that a named person was the director or producer of the film;
- (b) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film; or
- (c) that a named person was the owner of copyright in the film immediately after it was made,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(6) The presumption in paragraph (5) shall apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast or included in a cable programme service.

(7) For the purposes of this Article, a statement that a person was the director of a film shall be taken, unless a contrary indication appears, as meaning that he was the principal director of the film.

#### ARTICLE 127

##### **Presumptions relevant to works subject to Crown or States copyright**

In proceedings brought by virtue of this Part with respect to a literary, dramatic or musical work in which Crown or States copyright subsists, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct in the absence of evidence to the contrary.

#### *Offences*

#### ARTICLE 128

##### **Criminal liability for making or dealing with infringing articles, etc.**

- (1) A person shall be guilty of an offence who, without the licence of the copyright owner -
  - (a) makes for sale or hire;
  - (b) imports into the Island otherwise than for his private and domestic use;
  - (c) possesses in the course of a business with a view to committing any act infringing the copyright;
  - (d) in the course of a business -
    - (i) sells or lets for hire,
    - (ii) offers or exposes for sale or hire,
    - (iii) exhibits in public, or
    - (iv) distributes; or

- (e) distributes otherwise than in the course of a business to an extent that affects prejudicially the owner of the copyright,

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

- (2) A person shall be guilty of an offence who -
  - (a) makes an article specifically designed or adapted for making copies of a particular copyright work; or
  - (b) has such an article in his possession,

knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.

- (3) Where copyright is infringed (otherwise than by reception of a broadcast or cable programme) by -
  - (a) the public performance of a literary, dramatic or musical work; or
  - (b) the playing or showing in public of a sound recording or film,

any person who caused the work to be so performed, played or shown shall be guilty of an offence if he knew or had reason to believe that copyright would be infringed.

(4) A person guilty of an offence under paragraph (1)(a), (b), (d)(iv) or (e) shall be liable to imprisonment for a term not exceeding ten years or to a fine, or both.

(5) A person guilty of any other offence under this Article shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, <sup>[5]</sup> or both.

(6) Articles 125 to 127 shall not apply to proceedings for an offence under this Article, but without prejudice to their application in proceedings for an order under Article 129.

## ARTICLE 129

### **Order for delivery up in criminal proceedings**

(1) The court before which proceedings are brought against a person for an offence under Article 128 may, if satisfied that at the time of his arrest or charge -

- (a) he had in his possession, custody or control in the course of a business an infringing copy of a copyright work; or
- (b) he had in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that the article had been or was to be used to make infringing copies,

order that the infringing copy or article be delivered up to the copyright owner or to such other person as the court directs.

(2) For this purpose a person shall be treated as charged with an offence when he is orally charged or is served with a summons.

(3) An order may be made by the court of its own motion or on the application by or on behalf of the Attorney General or by the person presenting the case, and may be made whether or not the person is convicted of the offence, but shall not be made -

- (a) after the end of the period specified in Article 134; or
  - (b) if it appears to the court unlikely that any order will be made under Article 135.
- (4) An appeal lies to the Court from an order made under this Article by the Magistrate's Court.

(5) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this Article shall retain it pending the making of an order, or the decision not to make an order; under Article 135.

## ARTICLE 130

### **Search warrants**

(1) Where the Bailiff or a Jurat is satisfied by information on oath given by a police officer that there are reasonable grounds for believing -

- (a) that an offence under Article 128(1) or (2) has been or is about to be committed in any premises; and
- (b) that evidence that the offence has been or is about to be committed is in those premises,

he may issue a warrant authorizing a police officer to enter and search the premises, using any reasonable force necessary.

(2) A warrant under this Article -

- (a) may authorize persons to accompany any police officer executing the warrant; and
- (b) shall remain in force for 28 days from the date of its issue.

(3) In executing a warrant issued under this Article a police officer may seize an article if he reasonably believes that it is evidence that any offence under Article 128(1) or (2) has been or is about to be committed.

(4) In this Article “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

## ARTICLE 131

### **Criminal liability**

(1) A person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

(2) Where an offence under this Law committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
- (b) a person purporting to act in any such capacity,

that person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

### *Importation of infringing copies*

## ARTICLE 132

### **Infringing copies may be treated as prohibited goods**

(1) The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to the Agent of the Impôts -

- (a) that he is the owner of the copyright in the work; and
- (b) that he requests the Agent of the Impôts, for a period specified in the notice, to treat as prohibited goods

printed copies of the work which are infringing copies.

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

(3) The owner of the copyright in a sound recording or film may give notice in writing to the Agent of the Impôts -

- (a) that he is the owner of the copyright in the work;
- (b) that infringing copies of the work are expected to arrive in the Island at a time and place specified in the notice; and
- (c) that he requests the Agent of the Impôts to treat the copies as prohibited goods.

(4) The Agent of the Impôts may treat as prohibited goods only infringing copies of works which arrive in the Island -

- (a) from outside the EEA; or
- (b) from within that Area but not having been entered for free circulation.

(5) This Article shall not apply to goods entered, or expected to be entered, for free circulation, export or re-export or for a suspensive procedure in respect of which an application may be made under Article 3(1) of Council Regulations (EC) No. 3295/94 laying down measures to prohibit the release for free circulation, export or re-export or entry for a suspensive procedure of counterfeited or pirated goods.

(6) When a notice is in force under this Article the importation of goods to which the notice relates, otherwise than by a person for his private and domestic use, shall, subject to paragraphs (4) and (5), be prohibited, but a person shall not be, by reason of the prohibition, liable to any penalty other than forfeiture of the goods.

#### ARTICLE 133

##### **Power of Committee to make Orders**

(1) The Committee may by Order prescribe the form in which notice is to be given under Article 132 and require a person giving notice -

- (a) to furnish the Agent of the Impôts with the evidence specified in the Order, either on giving notice or when the goods are imported, or at both those times; and
- (b) to comply with any other conditions specified in the Order.

(2) The Order may, in particular, require a person giving the notice -

- (a) to pay the fees in respect of the notice specified by the Order;
- (b) to give security so specified in respect of any liability or expense which the Agent of the Impôts may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained; and
- (c) to indemnify the Agent of the Impôts against that liability or expense, whether security has been given or not.

(3) An Order made under paragraph (1) may make different provision as respects different classes of case to which it applies and may include such incidental and supplementary provisions as the Committee consider expedient.

#### *Supplementary*

#### ARTICLE 134

##### **Period after which remedy of delivery up not available**

(1) Subject to paragraphs (2) and (3), an application for an order under Article 120 may not be made after the end of the period of 6 years from the date on which the infringing copy or article in question was made.

(2) If during the whole or part of the period specified in paragraph (1), the copyright owner is -

(a) under a disability; or

(b) prevented by fraud or concealment from discovering the facts entitling him to apply for an order,

an application may be made at any time before the end of the period of 6 years from the date on which he ceased to be under a disability or could with reasonable diligence have discovered those facts.

(3) For the purposes of paragraph (2) a person shall be treated as under a disability while he is under the age of 18 years or is of unsound mind.

(4) An order under Article 129 shall not in any case be made after the end of the period of 6 years from the date on which the infringing copy or article in question was made.

#### ARTICLE 135

##### **Order as to disposal of infringing copy or other article**

(1) An application may be made to the Court for an order that an infringing copy or other article, delivered up in pursuance of an order under Article 120 or 129 or seized and detained in pursuance of the right conferred by Article 121, shall be -

(a) forfeited to the copyright owner; or

(b) destroyed or otherwise dealt with as the Court may think fit,

or for a decision that no such order should be made.

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

(3) Provision shall be made by Rules of Court as to the service of the notice on a person having an interest in the copy or other article, and that person is entitled -

(a) to appear in proceedings for an order under this Article, whether or not he was served with notice; and

(b) to appeal against any order made, whether or not he appeared,

and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the appeal.

(4) Where there is more than one person interested in a copy or other article, the Court shall make such order as it thinks just and may direct that the article be sold, or otherwise dealt with, and the proceeds divided.

(5) If the Court decides that no order should be made under this Article, the person in whose possession, custody or control the copy or other article was before being delivered up or seized is entitled to its return.

(6) References in this Article to a person having an interest in a copy or other article include any person in whose favour an order could be made in respect of it under this Article or under Article 29 of the Trade Marks (Jersey) Law 2000<sup>[6]</sup> (which make similar provision in relation to infringement of rights in designs and trade marks).

#### ARTICLE 136

##### **Forfeiture of infringing copies, etc.**

(1) Where there have come into the possession of any person in connection with the investigation or prosecution of a relevant offence -

- (a) infringing copies of a copyright work; or
- (b) articles specifically designed or adapted for making copies of a particular copyright work,

that person may apply under this Article for an order for the forfeiture of the infringing copies or articles.

(2) For the purposes of this Article “relevant offence” means -

- (a) an offence under Article 128; or
- (b) an offence involving dishonesty or deception.

(3) An application under this Article may be made -

- (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the infringing copies or articles, to that court; or
- (b) where no application for the forfeiture of the infringing copies or articles has been made under paragraph (a), to the magistrate or Sous-Magistrat.

(4) On an application under this Article, the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles.

(5) A court may infer for the purposes of this Article that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(6) Any person aggrieved by an order made under this Article, or by a decision not to make such an order, may appeal against that order or decision to the Royal Court.

(7) An order under this Article may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(8) Subject to paragraph (9), where any infringing copies or articles are forfeited under this Article they shall be destroyed in accordance with such directions as the court may give.

(9) On making an order under this Article the court may direct that the infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate.

## *PART 8*

### COPYRIGHT LICENSING

#### *Licensing schemes and licensing bodies*

#### ARTICLE 137

#### **Licensing schemes and licensing bodies**

(1) In this Part, “licensing scheme” means a scheme setting out the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant copyright licences and the terms on which licences would be granted in those classes of case and for this purpose a “scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) In this Part, “licensing body” means a society or other organization which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.

(3) In this Article “copyright licences” means licences to do, or authorize the doing of, any of the acts restricted by copyright.

(4) References in this Part to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only -

- (a) a single collective work or collective works of which the authors are the same; or
- (b) works made by, or by employees of, or commissioned by, a single individual, firm, company or group of companies.

(5) For the purpose of paragraph (4)(b), a group of companies means a holding company and its subsidiaries, within the meaning of Article 2 of the Companies (Jersey) Law 1991.<sup>[7]</sup>

*References and applications with respect to licensing schemes*

ARTICLE 138

**Licensing schemes to which the following Articles apply**

Articles 139 to 144 shall apply to licensing schemes which are operated by licensing bodies and cover works of more than one author, so far as they relate to licences for -

- (a) copying the work;
- (b) rental or lending of copies of the work to the public;
- (c) performing, showing or playing the work in public; or
- (d) broadcasting the work or including it in a cable programme service,

and references in those Articles to a licensing scheme shall be construed accordingly.

ARTICLE 139

**Reference of proposed licensing scheme to Tribunal**

(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Tribunal by an organization professing to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

ARTICLE 140

**Reference of licensing scheme to Tribunal**

(1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and -

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

that person or organization may refer the scheme to the Tribunal in so far as it relates to cases of that description.



(2) A scheme which has been referred to the Tribunal under this Article shall remain in operation until proceedings on the reference are concluded.

(3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for any period the Tribunal determines.

#### ARTICLE 141

##### **Further reference of scheme to Tribunal**

(1) Where the Tribunal has on a previous reference of a licensing scheme under Article 139 or 140, or under this Article made an order with respect to the scheme, then, while the order remains in force -

- (a) the operator of the scheme;
- (b) a person claiming that he requires a licence in a case of the description to which the order applies; or
- (c) an organization claiming to be representative of such persons,

may refer the scheme again to the Tribunal so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases -

- (a) within twelve months from the date of the order on the previous reference; or
- (b) if the order was made so as to be in force for fifteen months or less, until the last three months before the expiry of the order.

(3) A scheme which has been referred to the Tribunal under this Article shall remain in operation until proceedings on the reference are concluded.

(4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for any period the Tribunal determines.

#### ARTICLE 142

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

(1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Tribunal.

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

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

may apply to the Tribunal.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of paragraph (2) if -

- (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or
- (b) the case is so similar to those in which the licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or to be reasonable in the circumstances.

- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

#### ARTICLE 143

##### **Application for review of order as to entitlement to licence**

(1) Where the Tribunal has made an order under Article 142 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.

- (2) An application shall not be made, except with the special leave of the Tribunal -

- (a) within twelve months from the date of the order, or of the decision on a previous application under this Article; or

- (b) if the order was made so as to be in force for fifteen months or less, or, as a result of the decision on a previous application under this Article, is due to expire within fifteen months of that decision, until the last three months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or the circumstances of the case.

#### ARTICLE 144

##### **Effect of order of Tribunal as to licensing scheme**

(1) A licensing scheme which has been confirmed or varied by the Tribunal under Article 139, 140 or 141 shall remain in operation or be in force, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

- (2) While the order is in force a person who, in a case of a class to which the order applies -

- (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained; and

- (b) complies with the other terms applicable to the licence under the scheme,

shall be in the same position, as regards infringement of copyright, as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

(3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made, or if later, on which the scheme came into operation.

- (4) If a direction under paragraph (3) is made -

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and

- (b) the reference in paragraph (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order,

but no direction may be made where paragraph (5) applies.

(5) An order of the Tribunal under Article 140 or 141 made with respect to a scheme which is certified for any purpose under Article 172 shall have effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal.

(6) Where the Tribunal has made an order under Article 142 and the order remains in force, if the person in whose favour the order is made -

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

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

*References and applications with respect to licensing by licensing bodies*

ARTICLE 145

**Licences to which following Articles apply**

Articles 146 to 149 shall apply to licences which are granted by a licensing body otherwise than in pursuance of a licensing scheme and cover works of more than one author, so far as they authorize -

- (a) copying the work;
- (b) rental or lending of copies of the work to the public;
- (c) performing, showing or playing the work in public; or
- (d) broadcasting the work or including it in a cable programme service,

and references in those Articles to a licence shall be construed accordingly.

ARTICLE 146

**Reference to Tribunal of terms of proposed licence**

(1) The terms on which a licensing body proposes to grant a licence may be referred to the Tribunal by the prospective licensee.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

ARTICLE 147

**Reference to Tribunal of terms of expiring licence**

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

(2) An application made under paragraph (1) may not be made until the last three months before the licence is

due to expire.

(3) A licence in respect of which an application under paragraph (1) has been made to the Tribunal shall remain in operation until proceedings on the application are concluded.

(4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.

(5) An order of the Tribunal under this Article may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

#### ARTICLE 148

##### **Application for review of order as to licence**

(1) Where the Tribunal has made an order under Article 146 or 147, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.

(2) An application shall not be made, except with the special leave of the Tribunal -

(a) within twelve months from the date of the order or of the decision on a previous application under this Article; or

(b) if the order was made so as to be in force for fifteen months or less, or, as a result of the decision on a previous application under this Article, is due to expire within fifteen months of that decision, until the last three months before the expiry date.

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

#### ARTICLE 149

##### **Effect of order of Tribunal as to licence**

(1) Where the Tribunal has made an order under Article 146 or 147 and the order remains in force, if the person entitled to the benefit of the order -

(a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained; and

(b) complies with the other terms specified in the order,

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

(2) The benefit of the order may be assigned -

(a) in the case of an order under Article 146, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) in the case of an order under Article 147, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order under Article 146 or 147, or an order under Article 148 varying that order, so far as it varies the amount of charges payable has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or was due to expire.

(4) If a direction is made under paragraph (3) -

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and
- (b) the reference in paragraph (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

*Factors to be taken into account in certain classes of case*

#### ARTICLE 150

##### **General considerations: unreasonable discrimination**

In determining what is reasonable on a reference or application under this Part relating to a licensing scheme or licence, the Tribunal shall have regard to -

- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances; and
- (b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

#### ARTICLE 151

##### **Licences for reprographic copying**

Where a reference or application is made to the Tribunal under this Part relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, the Tribunal shall have regard to -

- (a) the extent to which published editions of the work in question are otherwise available;
- (b) the proportion of the work to be copied; and
- (c) the nature of the use to which the copies are likely to be put.

#### ARTICLE 152

##### **Licences for educational establishments in respect of works included in broadcasts or cable programmes**

(1) This Article shall apply to references or applications under this Part relating to licences for the recording by or on behalf of educational establishments of broadcasts or cable programmes which include copyright works, or the making of copies of those recordings, for educational purposes.

(2) The Tribunal shall, in considering what charges (if any) should be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

#### ARTICLE 153

##### **Licences to reflect conditions imposed by promoters of events**

(1) This Article shall apply to references or applications under this Part in respect of licences relating to sound recordings, films, broadcasts or cable programmes which include, or are to include, any entertainment or other event.

(2) The Tribunal shall have regard to any conditions imposed by the promoters of the entertainment or other event and, in particular, the Tribunal shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

(3) Nothing in this Article shall require the Tribunal to have regard to any of the conditions referred to in

paragraph (2) in so far as they -

- (a) purport to regulate the charges to be imposed in respect of the grant of licences; or
- (b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film, broadcast or cable programme.

#### ARTICLE 154

##### **Licences to reflect payments in respect of underlying rights**

- (1) In considering what charges should be paid for a licence -
  - (a) on a reference or application under this Part relating to licences for the rental or lending of copies of a work; or
  - (b) on an application under Article 171,

the Tribunal shall take into account any reasonable payments which the owner of the copyright in the work is liable to make in consequence of either the granting of the licence, or of the acts authorized by the licence, to owners of copyright in works included in that work.

(2) On any reference or application under this Part relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes, the Tribunal shall take into account, in considering what charges should be paid for a licence, any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorized by the licence, in respect of any performance included in the recording, film, broadcast or cable programme.

#### ARTICLE 155

##### **Licences in respect of works included in re-transmissions**

(1) This Article shall apply to references or applications under this Part relating to licences to include in a broadcast or cable programme service -

- (a) literary, dramatic, musical or artistic works; or
- (b) sound recordings of films,

where one broadcast or cable programme (“the first transmission”) is, by reception and immediate re-transmission, to be further broadcast or included in a cable programme service (“the further transmission”).

(2) So far as the further transmission is to the same area as the first transmission, the Tribunal shall, in considering what charges, if any, should be paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission which adequately remunerates him in respect of transmissions to that area.

(3) So far as the further transmission is to an area outside that to which the first transmission was made, the Tribunal shall leave the further transmission out of account in considering what charges, if any, should be paid for licences for the first transmission.

#### ARTICLE 156

##### **Mention of specific matters not to exclude other relevant considerations**

The mention in Articles 150 to 155 of specific matters to which the Tribunal is to have regard in certain classes of case shall not affect the Tribunal’s general obligation in any case to have regard to all relevant considerations.

*Use of right of sound recordings in broadcasts and cable programme services*

## ARTICLE 157

### **Circumstances in which right available**

if - (1) Article 159 shall apply to the inclusion in a broadcast or cable programme service of any sound recordings

- (a) a licence to include those recordings in the broadcast or cable programme service could be granted by a licensing body or such a body could procure the grant of a licence to do so;
- (b) the condition in paragraph (2) or (3) applies; and
- (c) the person including those recordings in the broadcast or cable programme service has complied with Article 158.

(2) Where the person including the recording in the broadcast or cable programme service does not hold a licence to do so, the condition referred to in paragraph (1)(b) is that the licensing body refuses to grant, or procure the grant of, that licence, being a licence -

- (a) whose terms as to payment for including the recordings in the broadcast or cable programme service would be acceptable to him or comply with an order of the Tribunal under Article 160 relating to such a licence or any scheme under which it would be granted; and
- (b) allowing unlimited needletime or such needletime as he has demanded.

(3) Where he holds a licence to include the recordings in the broadcast or cable programme service, the condition referred to in paragraph (1)(b) is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or such needletime as he has demanded, or refuses to do so on terms that fall within paragraph (2)(a).

(4) The references in paragraph (2) to refusing to grant, or procure the grant of, a licence, and in paragraph (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.

(5) In this Article and Articles 158 to 163 -

“needletime” means the time in any period (whether determined as a number of hours in the period or a proportion of the period, or otherwise) in which any recordings may be included in a broadcast or cable programme service;

“sound recording” does not include a film sound track when accompanying a film.

(6) In Articles 158 to 163, “terms of payment” means terms as to payment for including sound recordings in a broadcast or cable programme service.

## ARTICLE 158

### **Notice of intention to exercise right**

(1) A person intending to avail himself of the right conferred by Article 159 shall -

- (a) give notice to the licensing body of his intention to exercise the right, asking the body to propose terms of payment; and
- (b) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.

(2) Where a person referred to in paragraph (1) has a licence to include the recordings in a broadcast or cable programme service, the date specified in a notice under paragraph (1)(b) shall not be sooner than the date of expiry of that licence except in a case falling within Article 157(3).

- (3) Before a person intending to avail himself of the right begins to exercise it, he shall -
- (a) give reasonable notice to the Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so; and
  - (b) apply to the Tribunal under Article 160 to settle the terms of payment.

#### ARTICLE 159

##### **Conditions for exercise of right**

(1) A person who, on or after the date specified in a notice under Article 158(1)(b), includes in a broadcast or cable programme service any sound recordings in circumstances in which this Article applies, and who -

- (a) complies with any reasonable condition, notice of which has been given to him by the licensing body, as to inclusion in the broadcast or cable programme service of those recordings;
- (b) provides that body with such information about their inclusion in the broadcast or cable programme service as it may reasonably require; and
- (c) makes payments to the licensing body in accordance with this Article,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question.

(2) Payments under clause (1)(c) shall be made at not less than quarterly intervals in arrears.

(3) The amount of any payment under clause (1)(c) shall be that determined in accordance with any order of the Tribunal under Article 160 or, if no order has been made-

- (a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under Article 158; or
- (b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under Article 158(1)(b).

(4) Where this Article applies to the inclusion in a broadcast or cable programme service of any sound recordings, it shall do so in place of any licence.

#### ARTICLE 160

##### **Applications to settle payments**

(1) On an application to settle the terms of payment, the Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(2) An order under paragraph (1) shall have effect from the date the applicant begins to exercise the right conferred by Article 159, and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

#### ARTICLE 161

##### **References etc., about conditions, information and other terms**

(1) A person exercising the right conferred by Article 159, or who has given notice to the Tribunal of his intention to do so, may refer to the Tribunal -

- (a) any question as to whether any condition as to the inclusion in a broadcast or cable programme service of sound recordings, notice of which has been given to him by the licensing body in question, is a reasonable



condition; or

- (b) any question as to whether any information is information which the licensing body can reasonably require him to provide.

(2) On a reference under this Article, the Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

## ARTICLE 162

### **Application for review of order**

(1) A person exercising the right conferred by Article 159 or the licensing body may apply to the Tribunal to review any order made under Article 160 or 161.

(2) An application shall not be made, except with the special leave of the Tribunal -

- (a) within twelve months from the date of the order, or of the decision on a previous application under this Article; or
- (b) if the order was made so as to be in force for fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.

(3) On the application the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

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

## ARTICLE 163

### **Factors to be taken into account**

(1) In determining what is reasonable on an application or reference made under Article 160 or 161, or on reviewing any order made under Article 162, the Tribunal shall -

- (a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by Article 159; and
- (b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.

(2) In settling the terms of payment under Article 160, the Tribunal shall not be guided by any order it has made under any enactment other than that Article.

(3) Article 155 shall apply on an application or reference under Articles 160 to 162 as it applies on an application or reference relating to a licence.

## ARTICLE 164

### **Power to amend Articles 157 to 163**

The Committee may by Order, subject to any transitional provision as appears to it to be appropriate, amend Articles 157 to 163 so as -

- (a) to include in any reference to sound recordings any works of a description specified in the Order; or
- (b) to exclude from any reference to a broadcast or cable programme service any broadcast or cable programme service of a description so specified.

*Implied indemnity in schemes or licences for reprographic copying*

ARTICLE 165

**Implied indemnity in certain schemes and licences  
for reprographic copying**

- (1) This Article shall apply to -
  - (a) schemes for licensing reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions; and
  - (b) licences granted by licensing bodies for such copying,

where the scheme or licence does not specify the works to which it applies with sufficient particularity to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.

- (2) There shall be implied -
  - (a) in every scheme to which this Article applies an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme; and
  - (b) in every licence to which this Article applies an undertaking by the licensing body to indemnify the licensee,

against any liability incurred by him by reason of his having infringed copyright by making or authorizing the making of reprographic copies of a work in circumstances within the apparent scope of his licence.

- (3) The circumstances of a case shall be within the apparent scope of a licence if -
  - (a) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies; and
  - (b) the licence does not expressly provide that it does not extend to copyright of the description infringed.

(4) In this Article “liability” includes liability to pay costs, and this Article shall apply in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against him for infringement of copyright as it applies to sums which he is liable to pay in respect of such infringement.

- (5) A scheme or licence to which this Article applies may contain reasonable provision -
  - (a) with respect to the manner in which, and the time within which, claims under the undertaking implied by this Article are to be made; and
  - (b) enabling the operator of the scheme or the licensing body to take over the conduct of any proceedings affecting the amount of his liability to indemnify.

*Reprographic copying by educational establishments*

ARTICLE 166

**Power to extend coverage of scheme or licence**

- (1) This Article shall apply to -
  - (a) a licensing scheme to which Articles 139 to 144 apply and which is operated by a licensing body; or
  - (b) a licence to which Articles 146 to 149 apply,

so far as it provides for the grant of licences, or is a licence, authorizing the making by or on behalf of educational establishments, for the purposes of instruction, of reprographic copies of published literary, dramatic, musical or artistic works, or of the typographical arrangement of published editions.

- (2) If it appears to the Committee with respect to a scheme or licence to which this Article applies that -
- (a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it; and
  - (b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners,

it may determine that the scheme or licence shall extend to those works.

(3) Where it proposes to make a determination under paragraph (2), the Committee shall cause notice of the proposal to be given to -

- (a) the copyright owners;
- (b) the licensing body in question; and
- (c) any persons or organizations representative of educational establishments, and such other persons or organizations as the Committee thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Committee about the proposal within six months from the date of the notice and if any of them wishes to make oral representations the Committee shall appoint a person to hear the representations and report to it.

(5) In considering whether to make a determination the Committee shall take into account any representations made to it in accordance with paragraph (4), and such other matters as appear to it to be relevant.

#### ARTICLE 167

##### **Variation or discharge of determination extending scheme or licence**

(1) The owner of the copyright in a work in respect of which a determination is in force under Article 166 may apply to the Committee for variation or revocation of the determination, stating his reasons for making the application.

(2) The Committee shall not entertain an application made within 2 years of the making of the original determination, or of the making of a determination on a previous application under this Article, unless it appears to it that the circumstances are exceptional.

(3) On considering the reasons for the application the Committee may confirm the determination forthwith and if it does not do so, it shall cause notice of the application to be given to -

- (a) the licensing body in question; and
- (b) any persons or organizations representative of educational establishments, and such other persons or organizations as it thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Committee about the application within the period of two months from the date of the notice and if any of them wishes to make oral representations, the Committee shall appoint a person to hear the representations and report to it.

(5) In considering the application the Committee shall take into account the reasons for the application, any representations made to it in accordance with paragraph (4), and such other matters as appear to it to be relevant.

(6) The Committee may make any determination it thinks fit confirming or revoking the determination, or the determination as previously varied, or varying, or further varying, it so as to exclude works from it.

#### ARTICLE 168

##### **Appeals against determinations**

(1) The owner of the copyright in a work which is the subject of a determination under Article 166 may appeal to the Tribunal which may confirm or revoke the determination or vary it so as to exclude works from it, as it thinks fit having regard to the considerations mentioned in Article 166(2).

(2) Where the Committee has made a determination under Article 167 -

(a) the person who applied for the determination; or

(b) any person or organization representative of educational establishments who was given notice of the application for the determination and made representations in accordance with Article 167(4),

may appeal to the Tribunal which may confirm or revoke the determination or make any other determination which the Committee might have made.

(3) An appeal under this Article shall be brought within six weeks of the making of the determination or such further period as the Tribunal may allow.

(4) A determination under Article 166 or 167 shall not come into effect until the end of the period of six weeks from the making of the determination or, if an appeal is brought before the end of that period, until the appeal proceedings are disposed of or withdrawn.

(5) If an appeal is brought after the end of that period, any decision of the Tribunal on the appeal shall not affect the validity of anything done in reliance on the determination appealed against before that decision takes effect.

#### ARTICLE 169

##### **Inquiry whether new scheme or general licence required**

(1) The Committee may appoint a person to inquire into the question of whether new provision is required, whether by way of a licensing scheme or general licence, to authorize the making by or on behalf of educational establishments, for the purposes of instruction, of reprographic copies of -

(a) published literary, dramatic, musical or artistic works; or

(b) the typographical arrangement of published editions,

of a description which appears to the Committee not to be covered by an existing licensing scheme or general licence and not to fall within the power conferred by Article 166.

(2) The procedure to be followed in relation to an inquiry shall be such as may be prescribed by Order by the Committee.

(3) The Order referred to in paragraph (2) shall, in particular, provide for notice to be given to-

(a) persons or organizations appearing to the Committee to represent the owners of copyright in works of that description; and

(b) persons or organizations appearing to the Committee to represent educational establishments,

and for the making of written or oral representations by such persons, but without prejudice to the giving of notice to, and the making of representations by, other persons and organizations.

(4) The person appointed under paragraph (1) to hold the inquiry shall not recommend the making of new provision unless he is satisfied -

(a) that it would be of advantage to educational establishments to be authorized to make reprographic copies of the works in question; and

(b) that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners.

(5) If the person appointed under paragraph (1) to hold the inquiry does recommend the making of new provision he shall specify any terms, other than terms as to charges payable, on which authorization under the new provision should be available.

(6) In this Article and in Article 170 “general licence” means a licence granted by a licensing body which covers all works of the description to which it applies.

#### ARTICLE 170

##### **Statutory licence where recommendation not implemented**

(1) The Committee may, within one year of the making of a recommendation under Article 169, by Order provide that if, or to the extent that, provision has not been made in accordance with the recommendation, the making by or on behalf of an educational establishment, for the purposes of instruction, of reprographic copies of the works to which the recommendation relates shall be treated as licensed by the owners of the copyright in the works.

(2) For that purpose provision shall be regarded as having been made in accordance with the recommendation if -

(a) a certified licensing scheme has been established under which a licence is available to the establishment in question; or

(b) a general licence has been -

(i) granted to or for the benefit of that establishment,

(ii) referred by or on behalf of that establishment to the Tribunal under Article 146, 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 Order under paragraph (1) shall provide that any existing licence authorizing the making of such copies (not being a licence granted under a certified licensing scheme or a general licence) shall cease to have effect to the extent that it is more restricted or more onerous than the licence provided for by the Order.

(4) An Order under paragraph (1) shall provide for the licence to be free of royalty but, as respects other matters subject to any terms specified in the recommendation and to any other terms as the Committee may think fit.

(5) (a) An Order under paragraph (1) may provide that where a copy which would otherwise be an infringing copy made in accordance with the licence provided by the Order but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright, for all subsequent purposes.

(b) In this paragraph “dealt with” means sold, let for hire, offered or exposed for sale or hire, or exhibited in public.

(6) An Order under paragraph (1) shall not come into force until at least six months after it is made.

(7) An Order under paragraph (1) may be varied from time to time, but not so as to include works other than those to which the recommendation relates or remove any terms specified in the recommendation, and may be revoked.

(8) In this Article a “certified licensing scheme” means a licensing scheme certified for the purposes of this Article under Article 172.

*Royalty or other sum payable for lending of certain works*

#### ARTICLE 171

##### **Royalty or other sum payable for lending of certain works**

(1) An application to settle the royalty or other sum payable in pursuance of Article 84 may be made to the

Tribunal by the copyright owner or the person claiming to be treated as licensed by him.

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

(3) Either party may subsequently apply to the Tribunal to vary an order made under paragraph (2), and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

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

(5) An order under paragraph (3) shall have effect from the date on which it is made or any later date specified by the Tribunal.

#### *Certification of licensing schemes*

### ARTICLE 172

#### **Certification of licensing schemes**

(1) A person operating or proposing to operate a licensing scheme may apply to the Committee to certify the scheme for the purposes of Articles 48, 78, 84, 93, or 170.

(2) The Committee shall certify the scheme if it is satisfied that the scheme -

(a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences; and

(b) sets out clearly the charges payable and the other terms on which licences will be granted.

(3) The scheme shall be scheduled to the certificate and the certification shall come into operation for the purposes of Articles 48, 78, 84, 93 or 170 -

(a) on a date, not less than eight weeks after the certification is made, specified in the certificate; or

(b) if the scheme is the subject of a reference under Article 139, any later date on which the order of the Tribunal under that Article comes into force or the reference is withdrawn.

(4) A variation of the scheme shall not be effective unless a corresponding amendment of the certificate is made, and the Committee shall make that amendment in the case of a variation ordered by the Tribunal on a reference under Articles 139, 140 or 141, and may do so in any other case if it thinks fit.

(5) The certificate shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Committee that it is no longer being operated according to its terms.

### ARTICLE 173

#### **Collective exercise of certain rights in relation to cable re-transmission**

(1) This Article shall apply to the right (in this Article referred to as “cable re-transmission right”) of the owner of copyright in a literary, dramatic, musical or artistic work, sound recording or film to grant or refuse authorization for cable re-transmission of a broadcast to the Island from an EEA State in which the work is included.

(2) Cable re-transmission right may be exercised against a cable operator only through a licensing body.

(3) Where a copyright owner has not transferred management of his cable re-transmission right to a licensed body, the licensing body which manages rights of the same category shall be deemed to be mandated to manage his right, but where more than one licensing body manages rights of that category, he may choose which of them is deemed to be mandated to manage his right.

(4) A copyright owner to whom paragraph (3) applies shall have the same rights and obligations resulting from any relevant agreement between the cable operator and the licensing body as have copyright owners who have transferred management of their cable re-transmission right to that licensing body.

(5) Any rights to which a copyright owner may be entitled by virtue of paragraph (4) shall be claimed within the period of three years beginning with the date of the cable re-transmission concerned.

(6) This Article shall not affect any rights exercisable by the maker of the broadcast, whether in relation to the broadcast or a work included in it.

(7) In this Article -

“cable operator” means a person providing a cable programme service; and

“cable re-transmission” means the reception and immediate re-transmission by way of a cable programme service of a broadcast.

#### *PART 9*

### THE JERSEY COPYRIGHT TRIBUNAL

#### *The Tribunal*

#### ARTICLE 174

#### **The Jersey Copyright Tribunal**

(1) There is established a tribunal called the Jersey Copyright Tribunal.

(2) The Tribunal shall consist of a chairman, a deputy chairman and six ordinary members appointed by the Committee.

(3) A person shall not be eligible for appointment as chairman or deputy chairman unless he is an advocate or solicitor of the Royal Court or a person holding a legal professional qualification in another part of the British Islands of not less than 7 years' standing.

#### ARTICLE 175

#### **Membership of Tribunal**

(1) Subject to paragraphs (2), (3) and (4), the members of the Tribunal shall hold and vacate office in accordance with their terms of appointment.

(2) A member of the Tribunal may resign his office by notice in writing to the Committee.

(3) The Committee shall by notice in writing sent to the member concerned at his last-known place of business or residence, remove him from office if -

(a) he has been convicted of a criminal offence for which the maximum penalty includes a term of imprisonment;

(b) he has neglected his duty, or has engaged in dishonourable conduct, as a member of the Tribunal;

(c) he has become bankrupt or has made a composition with his creditors;

(d) he has become incapacitated by physical or mental illness; or

(e) he is, in the opinion of the Committee, otherwise unable to perform his duties as a member.

(4) If a member of the Tribunal is by reason of illness, absence or other reasonable cause for the time being unable to perform the duties of his office, either generally or in relation to particular proceedings, the Committee shall

appoint a person to discharge his duties for a period not exceeding six months at one time or in relation to those proceedings, and a person so appointed shall have during the period of his appointment, or in relation to the proceedings in question, the same powers as the person in whose place he is appointed.

#### ARTICLE 176

##### **Financial provisions**

(1) There shall be paid to the members of the Tribunal such remuneration (whether by way of salaries or fees), and such reimbursement of expenses, as the Committee, with the approval of the Finance and Economics Committee, may by Order determine.

(2) The Committee may appoint such staff for the Tribunal as, with the approval of the Finance and Economics Committee as to numbers and remuneration, it shall by Order determine.

#### ARTICLE 177

##### **Constitution for purposes of proceedings**

(1) For the purposes of any proceedings the Tribunal shall consist of -

- (a) a chairman, who shall be either the chairman or a deputy chairman of the Tribunal; and
- (b) two or more ordinary members.

(2) If the members of the Tribunal dealing with any matter are not unanimous, the decision shall be taken by majority vote; and if, in such a case, the votes are equal the chairman shall have a further, casting vote.

(3) Where part of any proceedings before the Tribunal has been heard and one or more members of the Tribunal are unable to continue, the Tribunal shall remain duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than three.

(4) If the chairman is unable to continue, the chairman of the Tribunal shall -

- (a) appoint one of the remaining members to act as chairman; and
- (b) appoint a suitably qualified person to attend the proceedings and advise the members on any questions of law arising.

(5) A person is "suitably qualified" for the purposes of paragraph (4)(b) if he is, or is eligible for appointment as a deputy chairman of the Tribunal.

##### *Jurisdiction and procedure*

#### ARTICLE 178

##### **Jurisdiction of the Tribunal**

Without prejudice to any other statutory provision, the function of the Tribunal is to hear and determine proceedings under Articles 92, 115, 139, 140, 141, 142, 143, 146, 147, 148, 160, 161, 168 and 171.

#### ARTICLE 179

##### **General power to make rules**

(1) The Committee may by Order make rules for regulating proceedings before the Tribunal and prescribing the fees chargeable in respect of those proceedings.

(2) The rules may apply in relation to the Tribunal any of the provisions of the Arbitration (Jersey) Law 1998.<sup>[8]</sup>

(3) Provision shall be made by the rules -



- (a) prohibiting the Tribunal from entertaining a reference under Article 139, 140 or 141 by a representative organization unless the Tribunal is satisfied that the organization is reasonably representative of the class of persons which it claims to represent;
  - (b) specifying the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any person or organization satisfying the Tribunal that they have a substantial interest in the matter; and
  - (c) requiring the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.
- (4) The rules may make provision for regulating or prescribing any matters incidental to or consequential upon any appeal from the Tribunal under Article 182.

#### ARTICLE 180

##### **Costs, proof of orders, etc.**

- (1) The Tribunal may order that the costs of a party to proceedings before it shall be paid by such other party as the Tribunal may direct, and the Tribunal may tax or settle the amount of the costs or give directions as to the manner in which they are to be taxed.
- (2) A document purporting to be a copy of an order of the Tribunal and to be certified by the chairman to be a true copy shall, in any proceedings, be sufficient evidence of the order unless the contrary is proved.

#### ARTICLE 181

##### **Award of interest**

The Tribunal may, in any award made in accordance with this Law, award simple interest at such rate and for such period, beginning not earlier than the date the reference or application to the Tribunal was made, and ending not later than the date of the order, as the Tribunal may think reasonable in the circumstances.

#### ARTICLE 182

##### **Appeal to the Court on point of law**

- (1) An appeal shall lie on any point of law arising from a decision of the Tribunal to the Court.
- (2) Provision shall be made by rules under Article 179 limiting the time within which an appeal may be brought.
- (3) Provision may be made by rules under Article 179 -
  - (a) for suspending, or authorizing or requiring the Tribunal to suspend, the operation of orders of the Tribunal in cases where its decision is appealed against;
  - (b) for modifying in relation to an order of the Tribunal whose operation is suspended the operation of any provision of this Law as to the effect of the order; and
  - (c) for the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the Tribunal are informed of its suspension.

#### *PART 10*

#### QUALIFICATION FOR AND EXTENT OF COPYRIGHT PROTECTION

##### *Qualification for copyright protection*

#### ARTICLE 183

### **Qualification for copyright protection**

(1) Copyright shall not subsist in a work unless the qualification requirements of this Part are satisfied as regards -

- (a) the author;
- (b) the country in which the work was first published; or
- (c) in the case of a broadcast or cable programme, the country from which the broadcast was made or the cable programme was sent.

(2) Paragraph (1) shall not apply in relation to Crown copyright or States copyright or to copyright subsisting by virtue of Article 215.

(3) If the qualification requirements of this Part or Article 210, 212 or 215 are once satisfied in respect of a work, copyright shall not cease to subsist by reason of any subsequent event.

### ARTICLE 184

#### **Qualification by reference to author**

(1) A work shall qualify for copyright protection if the author was at the material time -

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject or a British protected person within the meaning of the British Nationality Act 1981 of the United Kingdom; or
- (b) an individual domiciled or resident in the Island; or
- (c) a body incorporated under the law of the Island.

(2) Where, or so far as, provision is made by Order under Article 187, a work shall qualify for copyright protection if at the material time the author was a citizen or subject of, an individual domiciled or resident in, or a body incorporated under the law of, a country to which the Order relates.

(3) A work of joint authorship shall qualify for copyright protection if at the material time any of the authors satisfies the requirements of paragraph (1) or (2), but where a work qualifies for copyright protection only under this Article only those authors who satisfy those requirements shall be taken into account for the purposes of -

- (a) Article 15(1) and (2);
- (b) Article 16, and Article 13(4), so far as it applies for the purposes of Article 16; and
- (c) Article 75.

(4) For the purposes of this Article, the material time in relation to a literary, dramatic, musical or artistic work shall be -

- (a) in the case of an unpublished work, when the work was made or, if the making of the work extended over a period, a substantial part of that period;
- (b) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his death.

(5) For the purposes of this Article, the material time in relation to descriptions of work other than those specified in paragraph (4) shall be-

- (a) in the case of a sound recording or film, when it was made;
- (b) in the case of a broadcast, when the broadcast was made;

- (c) in the case of a cable programme, when the programme was included in a cable programme service; and
- (d) in the case of the typographical arrangement of a published edition, when the edition was first published.

#### ARTICLE 185

##### **Qualification by reference to country of first publication**

(1) A literary, dramatic, musical or artistic work, a sound recording or film, or the typographical arrangement of a published edition, shall qualify for copyright protection if it is first published in the Island.

(2) Where, or so far as, provision is made by Order under Article 187, that work shall qualify for copyright protection if it is first published in a country to which the Order relates.

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

#### ARTICLE 186

##### **Qualification by reference to place of transmission**

(1) A broadcast shall qualify for copyright protection if it is made from, and a cable programme qualifies for copyright protection if it is sent from, a place in the Island.

(2) Where, or so far as, provision is made by Order under Article 187, a broadcast or cable programme qualifies for copyright protection if it is made from or sent from a place in a country to which the Order relates.

#### *Application of this Law*

#### ARTICLE 187

##### **Application of this Law in relation to other countries**

(1) The Committee may by Order make provision for applying in relation to a country outside the Island any of the provisions of this Law specified in the Order, so as to secure that those provisions -

- (a) apply in relation to persons who are citizens or subjects of that country or are domiciled or resident there, as they apply to persons who are British citizens or are domiciled or resident in the Island; or
- (b) apply in relation to bodies incorporated under the law of that country as they apply in relation to bodies incorporated under the law of the Island;
- (c) apply in relation to works first published in that country as they apply in relation to works first published in the Island;
- (d) apply in relation to broadcasts made from or cable programmes sent from that country as they apply in relation to broadcasts made from or cable programmes sent from the Island; or
- (e) apply in relation to the Crown in right of that country as they apply in relation to the Crown in right of the Island.

(2) An Order made under paragraph (1) may make provision for all or any of the matters referred to in paragraph (1) and may -

- (a) apply any provisions of this Law subject to the exceptions and modifications specified in the Order; and
- (b) direct that any provisions of this Law apply either generally or in relation to the classes of works, or other classes of case, that are specified in the Order.

(3) Except in the case of the United Kingdom, another Convention country or another member State of the European Economic Community, the Committee shall not make an Order under this Article in relation to a country unless satisfied that provision has been or will be made under the law of that country, in respect of the class of works to which the Order relates, giving adequate protection to the owners of copyright under this Law.

(4) In paragraph (3) “Convention country” means a country which is a party to a Convention relating to copyright which extends to the Island.

#### ARTICLE 188

##### **Denial of copyright protection to citizens of other countries not giving adequate protection to Jersey works**

(1) If it appears to the Committee that the law of a country fails to give adequate protection to Jersey works to which this Article applies, or to one or more classes of those works, the Committee may make provision by Order in accordance with this Article restricting the rights conferred by this Law in relation to works of authors connected with that country.

(2) An Order under this Article shall designate the country concerned and shall provide that, for the purposes specified in the Order, works first published after a date specified in the Order shall not be treated as qualifying for copyright protection by virtue of that publication if at that time the authors are -

- (a) citizens or subjects of that country (not domiciled or resident in the Island); or
- (b) bodies incorporated under the law of that country,

and the Order may make provision for all the purposes of this Law or for the purposes specified in the Order, and either generally or in relation to the class of cases specified in the Order, having regard to the nature and extent of the failure referred to in paragraph (1).

(3) This Article shall apply to literary, dramatic, musical and artistic works, sound recordings and films.

(4) In this Article, “Jersey works” means works of which the author was a qualifying person at the material time within the meaning of Article 184.

#### *Supplementary*

#### ARTICLE 189

##### **Territorial waters**

For the purpose of this Law the territorial waters of the Island shall be treated as part of the Island.

#### ARTICLE 190

##### **Jersey ships**

(1) This Law shall apply to things done on a Jersey ship as it applies to things done in the Island.

(2) In this Article “Jersey ship” means a ship which is a British ship for the purposes of the Merchant Shipping Act 1894 of the United Kingdom and is registered under that Act in the Island.

#### *PART 11*

#### DATABASE RIGHT

#### ARTICLE 191

##### **Interpretation**

(1) In this Part -

“extraction”, in relation to any contents of a database, means the permanent or temporary transfer of those contents to another medium by any means or in any form;

“insubstantial”, in relation to part of the contents of a database, shall be construed subject to Article 195(2);

“investment” includes any investment, whether of financial, human or technical resources;

“jointly”, in relation to the making of a database, shall be construed in accordance with Article 193(6);

“lawful user”, in relation to a database, means any person who (whether under a licence to do any of the acts restricted by any database right in the database or otherwise) has a right to use the database;

“maker”, in relation to a database, shall be construed in accordance with Article 193;

“re-utilisation”, in relation to any contents of a database, means making those contents available to the public by any means; and

“substantial”, in relation to any 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 will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public 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 which is accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the costs of the establishment, there shall be no direct or indirect economic or commercial advantage for the purposes of paragraph (2).

(4) Paragraph (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 Island or the EEA by, or with the consent of, the owner of the database right in the database, the further sale within the Island or the EEA of that copy shall not be taken for the purposes of this Part to constitute extraction or re-utilisation of the contents of the database.

## ARTICLE 192

### **Database right**

(1) A property right (“database right”) shall subsist, in accordance with this Part, in a database if there has been a substantial investment in obtaining, verifying or presenting the contents of the database.

(2) For the purposes of paragraph (1) it shall be immaterial whether or not the database or any of its contents is a copyright work, within the meaning of this Law.

(3) This Article shall have effect subject to Article 197.

## ARTICLE 193

### **The maker of a database**

(1) Subject to paragraphs (2) to (4), 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 his employment, his employer shall be regarded as the maker of the database, subject to any agreement to the contrary.

(3) Subject to paragraph (4) -

(a) where a database is made by an officer or servant of the Crown in the course of his duties, the Crown shall be regarded as the maker of the database; and

(b) where a database is made by an officer or servant of the States or any Administration of the States in the course of his duties, the States shall be regarded as the maker of the database.

(4) Where a database is made by or under the direction or control of the Crown, the States or a Committee or administration of the States, the body by whom, or under whose direction and control, the database is made shall be regarded as the maker of the database.

(5) For the purposes of this Part a database is made jointly if 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) References in this Part to the maker of a database shall, except as otherwise provided, be construed, in relation to a database which is made jointly, as references to all the makers of the database.

#### ARTICLE 194

##### **First ownership of database right**

The maker of a database shall be the first owner of database right in it.

#### ARTICLE 195

##### **Acts infringing database right**

(1) Subject to the provisions of this Part, a person shall infringe database right in a database if, without the consent of the owner of the right, he extracts or re-utilises all or a substantial part of the contents of the database.

(2) For the purposes of this Part, the repeated and systematic extraction or re-utilisation of insubstantial parts of the contents of a database may amount to the extraction or re-utilisation of a substantial part of those contents.

#### ARTICLE 196

##### **Term of protection**

(1) Database right in a database shall expire at the end of the period of fifteen years from the end of the calendar year in which the making of the database was completed.

(2) Where a database is made available to the public before the end of the period referred to in paragraph (1) database right in the database shall expire fifteen years from the end of the calendar year in which the database was first made available to the public.

(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.

(4) This Article shall have effect subject to Article 209.

#### ARTICLE 197

##### **Qualification for database right**

(1) Database right shall not subsist in a database unless, at the material time, its maker, or if it was made jointly, one or more of its makers, was -

(a) an individual who was a national of an EEA state or habitually resident in the Island or within the EEA;

(b) a body which was incorporated under the law of the Island or an EEA state and which, at that time, satisfied one of the conditions in paragraph (2); or

(c) a partnership or other unincorporated body which was formed under the law of the Island or an EEA state and

which, at that time, satisfied the condition in paragraph (2)(a).

(2) The conditions mentioned in paragraphs (1)(b) and (c) are -

(a) that the body has its central administration or principal place of business in the Island or within the EEA; or

(b) that the body has its registered office in the Island or within the EEA and the body's operations are linked on an ongoing basis with the economy of the Island or of an EEA state.

(3) Paragraph (1) shall not apply in any case falling within Article 193(4).

(4) In this Article "the material time" means the time when the database was made, or if the making extended over a period, a substantial part of that period.

#### ARTICLE 198

##### **Avoidance of certain terms affecting lawful users**

(1) A lawful user of a database which has been made available to the public in any manner 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, or part of a database, which has been made available to the public in any manner, 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, or of that part of the database, for any purpose.

#### ARTICLE 199

##### **Exceptions to database right**

(1) Database right in a database which has been made available to the public in any manner is not infringed by fair dealing with a substantial part of its contents if -

(a) that part is extracted from the database by a person who is apart from this paragraph a lawful user of the database;

(b) it is extracted for the purpose of illustration for teaching or research and not for any commercial purpose; and

(c) the source is indicated.

(2) The provisions of Schedule 3 specify other acts which may be done in relation to a database notwithstanding the existence of database right.

#### ARTICLE 200

##### **Acts permitted on assumption as to expiry of database right**

(1) Database right in a database shall not be infringed by the extraction or re-utilisation of a substantial part of the contents of the database at a time when, or in pursuance of arrangements made at a time when -

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

(b) it is reasonable to assume that database right has expired.

(2) In the case of a database alleged to have been made jointly, paragraph (1) shall apply in relation to each person alleged to be one of the makers.

#### ARTICLE 201

##### **Presumptions relevant to database right**

(1) The following presumptions shall apply in proceedings brought by virtue of this Part with respect to a database.

(2) Where a name purporting to be that of the maker appeared on copies of the database as published, or on the database when it was made, the person whose name appeared shall be presumed, until the contrary is proved -

(a) to be the maker of the database; and

(b) to have made it in circumstances not falling within Article 193(2) to (4).

(3) Where copies of the database as published bear a label or a mark stating -

(a) that a named person was the maker of the database; or

(b) that the database was first published in a specified year,

the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(4) In the case of a database alleged to have been made jointly, paragraphs (2) and (3), so far as is applicable, shall apply in relation to each person alleged to be one of the makers.

#### ARTICLE 202

##### **Application of copyright provisions to database right**

Articles 109 to 112, 118, 119, 122 and 123 shall apply in relation to database right and databases in which that right subsists as they apply in relation to copyright and copyright works.

#### ARTICLE 203

##### **Licensing of database right**

The provisions of Schedule 4 shall have effect with respect to the licensing of database right.

#### ARTICLE 204

##### **Database right: jurisdiction of Tribunal**

(1) The Tribunal shall have jurisdiction under this Part to hear and determine proceedings under paragraphs 3, 4, 5, 6, 7, 10, 11 or 12 of Schedule 4.

(2) The provisions of Part 9 shall apply in relation to the Tribunal when exercising any jurisdiction under this Part.

(3) Provision shall be made by rules under Article 179 prohibiting the Tribunal from entertaining a reference under paragraph 3, 4 or 5 of Schedule 4 by a representative organization unless the Tribunal is satisfied that the organization is reasonably representative of the class of persons which it claims to represent.

##### *Savings and transitional provisions*

#### ARTICLE 205

##### **Introductory**

In Articles 206 to 209 “commencement” means the commencement of this Law.

#### ARTICLE 206

##### **General rule**



Subject to Articles 207 and 208, this Law shall apply to databases made before or after commencement.

#### ARTICLE 207

##### **General savings**

- (1) Nothing in this Part shall affect any agreement made before commencement.
- (2) No act done -
  - (a) before commencement; or
  - (b) after commencement, in pursuance of an agreement made before commencement,

shall be regarded as an infringement of database right in a database.

#### ARTICLE 208

##### **Saving for copyright in certain existing databases**

- (1) Where a database is a copyright work immediately before commencement copyright shall continue to subsist in the database for the remainder of its copyright term.
- (2) In this Article “copyright term” means the period of the duration of copyright under Article 16.

#### ARTICLE 209

##### **Database right: term applicable to certain existing databases**

Where -

- (a) the making of a database was completed on commencement; and
- (b) on commencement, database right begins to subsist in the database,

database right shall subsist in the database for the period of fifteen years beginning with commencement.

#### *PART 12*

#### MISCELLANEOUS AND GENERAL

##### *Crown and States copyright*

#### ARTICLE 210

##### **Crown copyright**

- (1) Where a work is made by Her Majesty or by an officer or servant of the Crown in the course of his duties -
  - (a) the work shall qualify for copyright protection notwithstanding Article 183(1); and
  - (b) Her Majesty shall be the first owner of any copyright in the work.
- (2) Copyright in that work is referred to in this Law as “Crown copyright”, notwithstanding that it may be, or have been, assigned to another person.
- (3) Crown copyright in a literary, dramatic, musical or artistic work shall continue to subsist -
  - (a) until the end of the period of 125 years from the end of the calendar year in which the work was made; or
  - (b) if the work is published commercially before the end of the period of 75 years from the end of the calendar

year in which it was made, until the end of the period of 50 years from the end of the calendar year in which it was first so published.

(4) In the case of a work of joint authorship where one or more but not all of the authors are persons falling within paragraph (1) this Article shall apply only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

(5) Except as mentioned in paragraphs (1) to (4), and subject to any express exclusion elsewhere in his Law, the provisions of this Law shall apply in relation to Crown copyright as to other copyright.

(6) This Article shall not apply to a work if, or to the extent that, States copyright subsists in the work.

#### ARTICLE 211

##### **Copyright in Acts and Measures**

(1) Her Majesty shall be entitled to copyright in every Act of Parliament, Order in Council or Measure of the General Synod of the Church of England.

(2) Copyright under paragraph (1) shall subsist from Royal Assent until the end of the period of 50 years from the end of the calendar year in which Royal Assent was given.

(3) References in this Law to Crown copyright (except in Article 210) include copyright under this Article and except as mentioned in paragraphs (1) and (2), the provisions of this Law shall apply in relation to copyright under this Article as to other Crown copyright.

(4) No other copyright, or right in the nature of copyright, shall subsist in an Act of Parliament, Order in Council or Measure of the General Synod of the Church of England.

#### ARTICLE 212

##### **States copyright**

(1) Where a work is made by or under the direction or control of the States or any Committee or administration of the States -

(a) the work shall qualify for copyright protection notwithstanding Article 183(1); and

(b) the first owner of any copyright in the work is the body by whom, or under whose direction or control, the work is made.

(2) Copyright in that work is referred to in this Law as “States copyright”, notwithstanding that it may be, or have been, assigned to another person.

(3) States copyright in a literary, dramatic, musical or artistic work shall continue to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made.

(4) For the purposes of this Article, works made by or under the direction or control of the States or any Committee or administration of the States include -

(a) any work made by an officer or employee of that body in the course of his duties; and

(b) any sound recording, film, live broadcast or live cable programme of States proceedings,

but a work shall not be regarded as made by or under the direction or control of any of those bodies by reason only of its being commissioned by or on behalf of that body.

(5) In the case of a work of joint authorship where one or more but not all of the authors are acting on behalf of, or under the direction or control of, the States or any Committee or administration of the States, this Article shall apply only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

(6) Except as mentioned in paragraphs (1) to (5), and subject to any express exclusion elsewhere in this Law, the provisions of this Law shall apply in relation to States copyright as to other copyright.

(7) The provisions of this Article shall apply, subject to any exceptions or modifications specified by an Order made by the Committee, to works made by or under the direction or control of any other legislative body of any country outside the Island specified in the Order, and references in this Law to “States copyright” shall be construed accordingly.

#### ARTICLE 213

##### **Copyright in Laws, Triennial Regulations and Projets de Loi**

(1) Copyright in -

(a) all Laws and Triennial Regulations passed by the States; and

(b) all Projets de Loi and Projets de Règlement Triennaux lodged au Greffe,

shall belong to the States.

(2) Copyright under this Article in a Law or in Triennial Regulations shall subsist for the period of 50 years from the date on which the Law or Triennial Regulations are registered in the Court and shall cease in the case of a Projet de Loi or Projet de Règlement Triennaux when the Projet is rejected or withdrawn.

(3) References in this Law to States copyright, except in Article 212, shall include copyright under this Article and, except as mentioned in paragraphs (1) and (2), the provisions of this Law shall apply in relation to copyright under this Article as to other States copyright.

(4) No other copyright, or right in the nature of copyright, shall subsist in a Law or Triennial Regulations passed by the States or a Projet de Loi or Projet de Règlement Triennaux after copyright has once subsisted under this Article.

#### ARTICLE 214

##### **Supplementary provisions with respect to States copyright**

(1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, the States or any Committee or administration of the States shall each be treated as having the legal capacities of a body corporate.

(2) The functions of the States or any Committee or administration of the States as owner of copyright shall be exercised by the Greffier of the States on their behalf.

(3) Legal proceedings relating to copyright shall be brought by or against the States or any Committee or administration of the States in the name of the Greffier of the States.

##### *Other miscellaneous provisions*

#### ARTICLE 215

##### **Copyright vesting in certain international organizations**

(1) Where an original literary, dramatic, musical or artistic work is made by an officer or employee of, or is published by, an international organization to which this Article applies, and does not qualify for copyright protection under Article 184 or Article 185, copyright nevertheless shall subsist in the work by virtue of this Article and the organization shall be first owner of that copyright.

(2) The international organizations to which this Article applies shall be those as to which the Committee has by Order declared that it is expedient that this Article should apply.

(3) Copyright of which an international organization is first owner by virtue of this Article shall continue to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made or any longer period specified by the Committee by Order for the purpose of complying with the international obligations of the United

Kingdom which extend to the Island.

(4) An international organization to which this Article applies shall be deemed to have, and to have had at all material times, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright and in connection with all legal proceedings relating to copyright.

#### ARTICLE 216

##### **Folklore, etc.: anonymous unpublished works**

(1) Where in the case of an unpublished literary, dramatic, musical or artistic work of unknown authorship there is evidence that the author or, in the case of a joint work, any of the authors, was a qualifying person by connection with a country outside the Island, it shall be presumed until the contrary is proved that he was a qualifying person and that copyright accordingly subsists in the work, subject to the provisions of this Law.

(2) If, under the law of the country referred to in paragraph (1), a body is appointed to protect and enforce copyright in the works referred to in paragraph (1), the Committee may by Order designate that body for the purposes of this Article.

(3) A body designated under paragraph (2) shall be recognized in the Island as having authority to do in place of the copyright owner anything, other than assign copyright, which it is empowered to do under the law of that country, and it may, in particular, bring proceedings in its own name.

(4) In paragraph (1) a “qualifying person” means a person who at the material time, within the meaning of Article 184, was a person whose works qualified under that Article for copyright protection.

(5) This Article shall not apply if there has been an assignment of copyright in the work by the author of which notice has been given to the designated body, and nothing in this Article shall affect the validity of an assignment of copyright made, or licence granted, by the author or a person lawfully claiming under him.

##### *Devices designed to circumvent copy-protection*

#### ARTICLE 217

##### **Devices designed to circumvent copy-protection**

(1) This Article shall apply where copies of a copyright work are issued to the public, by or with the licence of the copyright owner, in an electronic form which is copy-protected.

(2) The person issuing the copies to the public shall have the same rights against a person who, knowing or having reason to believe that it will be used to make infringing copies -

(a) makes, imports or sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, any device or means specifically designed or adapted to circumvent the form of copy-protection employed; or

(b) publishes any information intended to enable or assist persons to circumvent that form of copy-protection,

as a copyright owner has in respect of an infringement of copyright.

(3) Where the copies being issued to the public as mentioned in paragraph (1) are copies of a computer program paragraph (2) shall apply as if for the words “or advertises for sale or hire” there were substituted “advertises for sale or hire or possesses in the course of a business”.

(4) The person issuing the copies to the public shall have the same rights under Article 120 or 121 in relation to any such device or means which a person has in his possession, custody or control with the intention that it should be used to make infringing copies of copyright works, as a copyright owner has in relation to an infringing copy.

(5) References in this Article to copy-protection include any device or means intended to prevent or restrict copying of a work or to impair the quality of copies made.

(6) Article 135 shall apply, with the necessary modifications, in relation to the disposal of anything delivered up

or seized by virtue of paragraph (4).

*Computer programs*

ARTICLE 218

**Avoidance of certain terms**

(1) Where a person has the use of a computer program under an agreement, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict -

- (a) the making of any back up copy of the program which it is necessary for him to have for the purposes of the agreed use;
- (b) where the conditions in Article 66(2) are met, the decompiling of the program; or
- (c) the use of any device or means to observe, study or test the functioning of the program in order to understand the ideas and principles which underlie any element of the program.

(2) In this Article, decompile, in relation to a computer program, has the same meaning as in Article 66.

*Databases*

ARTICLE 219

**Avoidance of certain terms relating to databases**

Where under an agreement a person has a right to use a database or part of a database, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict the performance of any act which would, but for Article 68, infringe the copyright in the database.

*Fraudulent reception of programmes*

ARTICLE 220

**Fraudulently receiving programmes**

A person who dishonestly receives a programme included in a broadcasting or cable programme service provided from a place within the Island with intent to avoid payment of any charge applicable to the reception of the programme shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.<sup>[9]</sup>

ARTICLE 221

**Unauthorized decoders**

(1) A person shall be guilty of an offence if he -

- (a) makes, imports, distributes, sells or lets for hire or offers or exposes for sale or hire any unauthorized decoder;
- (b) has in his possession for commercial purposes any unauthorized decoder;
- (c) installs, maintains or replaces for commercial purposes any unauthorized decoder; or
- (d) advertises any unauthorized decoder for sale or hire or otherwise promotes any unauthorized decoder by means of commercial communications.

(2) A person guilty of an offence under paragraph (1) shall be liable to imprisonment for a term not exceeding ten years, or to a fine, or to both.

(3) It shall be a defence to any prosecution for an offence under this article for the defendant to prove that he did

not know, and had no reasonable ground for believing, that the decoder was an unauthorized decoder.

(4) In this article -

“apparatus” includes any device, component or electronic data (including software);

“conditional access technology” means any technical measure or arrangement whereby access to encrypted transmissions in an intelligible form is made conditional on prior individual authorization;

“decoder” means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;

“encrypted” includes subjected to scrambling or the operation of cryptographic envelopes, electronic locks, passwords or any other analogous application;

“transmission” means -

(a) any programme included in a broadcasting or cable programme service which is provided from a place in the United Kingdom or any other member State; or

(b) any programme included in a broadcast or cable programme service which is provided from a place in the Island or elsewhere; and

“unauthorized”, in relation to a decoder, means that the decoder is designed or adapted to enable an encrypted transmission, or any service of which it forms part, to be accessed in an intelligible form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for accessing the transmission or service (whether by the circumvention of any conditional access technology related to the transmission or service or by any other means).

## ARTICLE 222

### **Search warrants**

(1) Where the Bailiff or a Jurat is satisfied by information on oath given by a police officer that there are reasonable grounds for believing -

(a) that an offence under Article 221(1) has been or is about to be committed in any premises; and

(b) that evidence that the offence has been or is about to be committed is in those premises,

he may issue a warrant authorizing a police officer to enter and search the premises, using any reasonable force necessary.

(2) A warrant under this Article -

(a) may authorize persons to accompany any police officer executing the warrant; and

(b) shall remain in force for 28 days from the date of its issue.

(3) In executing a warrant issued under this Article a police officer may seize an article if he reasonably believes that it is evidence that any offence under Article 221(1) has been or is about to be committed.

(4) In this Article “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

## ARTICLE 223

### **Forfeiture of unauthorized decoders**

(1) Where unauthorized decoders have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this Article for an order for the forfeiture of the unauthorized decoders.

(2) For the purposes of this Article “relevant offence” means -

- (a) an offence under Article 221(1); or
- (b) an offence involving dishonesty or deception.

(3) An application under this Article may be made -

- (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the unauthorized decoders, to that court; or
- (b) where no application for the forfeiture of the unauthorized decoders has been made under paragraph (a) to the Magistrate or Sous-Magistrat.

(4) On an application under this Article, the court shall make an order for the forfeiture of any unauthorized decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorized decoders.

(5) A court may infer for the purposes of this Article that such an offence has been committed in relation to any unauthorized decoders if it is satisfied that such an offence has been committed in relation to unauthorized decoders which are representative of the unauthorized decoders in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(6) A person aggrieved by an order made under this Article or by a decision not to make such an order, may appeal against that order or decision to the Royal Court.

(7) An order under this Article may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(8) Subject to paragraph (9), where any unauthorized decoders are forfeited under this Article they shall be destroyed in accordance with such directions as the court may give.

(9) On making an order under this Article the court may direct that the unauthorized decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under Article 224 in relation to the unauthorized decoders in question, or dealt with in such other way as the court considers appropriate.

## ARTICLE 224

### **Rights and remedies in respect of apparatus, &c. for unauthorized reception of transmissions**

(1) A person who -

- (a) makes charges for the reception of programmes included in a broadcasting or cable programme service provided from a place in the Island;
- (b) sends encrypted transmissions of any other description from a place in the Island; or
- (c) provides conditional access services from a place in the Island,

shall be entitled to the rights and remedies referred to in paragraphs (2) and (3).

(2) The rights and remedies referred to in paragraph (1) are, in addition to those referred to in paragraph (3), those rights and remedies available against a person -

- (a) who -
  - (i) makes, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire,
  - (ii) has in his possession for commercial purposes, or

(iii) installs, maintains or replaces for commercial purposes,

any apparatus designed or adapted to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so, or

(b) who publishes or otherwise promotes by means of commercial communications any information which is calculated to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so,

that a copyright owner has in respect of an infringement of copyright.

(3) In addition to the rights referred to in paragraph (2), the rights referred to in paragraph (1) are the right available under Article 120 or 121 in relation to any such apparatus as is referred to in paragraph (2) that a copyright owner has in relation to an infringing copy.

(4) In Article 119(1), as it applies to proceedings for infringement of the rights conferred by this article, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference to his not knowing or having reason to believe that his acts infringed the rights conferred by this article.

(5) Article 135 shall apply, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of paragraph (3).

(6) In this Article “apparatus”, “conditional access technology” and “encrypted” have the same meanings as in Article 221, “transmission” includes transmissions as defined in that article and “conditional access services” means services comprising the provision of conditional access technology.

#### ARTICLE 225

##### **Supplementary provisions as to fraudulent reception**

(1) The Committee may by Order -

- (a) provide that Article 220 shall not apply in relation to programmes included in services provided from a country outside the Island; and
- (b) provide that Article 221 shall not apply in relation to those programmes and to encrypted transmissions sent from that country.

(2) An Order under this Article shall only be made if it appears to the Committee that provision has not been made under the laws of that country giving adequate protection to persons making charges for programmes included in broadcasting or cable programme services provided from the Island or for encrypted transmissions sent from the Island.

(3) Where Articles 220 and 221 apply in relation to a broadcasting or cable programme service, they shall also apply to any service run for the person providing that service, or a person providing programmes for that service, which consists wholly or mainly in the sending by means of a telecommunication system of sounds or visual images, or both.

##### *Transitional provisions and savings*

#### ARTICLE 226

##### **Transitional provisions and savings**

Schedule 1, which contains transitional provisions and savings relating to works made, and acts or events occurring, before the commencement of this Law, and otherwise with respect to the operation of the provisions of this Law, shall have effect.

#### ARTICLE 227

##### **Rights and privileges under other enactments or the customary law**



- (1) Nothing in this Law shall affect -
  - (a) a right or privilege of a person under any enactment (except where the enactment is expressly repealed, amended or modified by this Law);
  - (b) a right or privilege of the Crown subsisting otherwise than under statutory provision;
  - (c) a right or privilege of the Assembly of the States;
  - (d) the right of the States or an administration of the States to sell, use or otherwise deal with articles forfeited under the laws relating to customs and excise; or
  - (e) the operation of a rule of customary law relating to breaches of trust or confidence.

(2) Subject to the savings in paragraph (1), no copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Law or another statutory provision in that behalf.

(3) Nothing in this Law shall affect any rule of customary law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise.

(4) Nothing in this Law shall affect a right of action or other remedy, whether civil or criminal, available otherwise than under this Law in respect of acts infringing any of the rights conferred by Part 5.

- (5) The savings in paragraph (1) shall have effect subject to Articles 211(5) and 213(4).

#### *Interpretation*

#### ARTICLE 228

##### **Meaning of EEA national and EEA State**

- (1) In this Law -

“EEA” means the European Economic Area;

“EEA national” means a national of an EEA State; and

“EEA State” means a State which is a contracting party to the EEA Agreement.

(2) References in this Law to a person being an EEA national shall be construed in relation to a body corporate as references to its being incorporated under the law of an EEA State.

(3) The “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th August 1993.

#### ARTICLE 229

##### **Construction of references to copyright owner**

(1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Law shall be the person who is entitled to the aspect of copyright relevant for that purpose.

(2) Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in this Law to the copyright owner shall be to all the owners, so that, in particular, any requirements of the licence of the copyright owner requires the licence of all of them.

#### ARTICLE 230

##### **Meaning of “educational establishment” and related expressions**

(1) The expression “educational establishment” in this Law means -

(a) a school; and

(b) any other description of educational establishment specified for the purposes of this Law, or that provision, by Order of the Committee.

(2) The Committee may by Order provide that the provisions of this Law relating to educational establishments shall apply, with any modifications and adaptations specified in the Order, in relation to teachers who are employed by the Education Committee to give instruction elsewhere to pupils who are unable to attend an educational establishment.

(3) An Order under paragraph (1)(b) may specify a description of educational establishment by reference to the instruments from time to time in force under any enactment specified in the Order.

(4) References in this Law to anything being done “on behalf of” an educational establishment are to its being done for the purposes of that establishment by any person.

#### ARTICLE 231

##### **Meaning of publication and commercial publication**

(1) In this Law “publication”, in relation to a work -

(a) means the issue of copies to the public; and

(b) includes, in the case of a literary, dramatic, musical or artistic work, making it available to the public by means of an electronic retrieval system.

(2) In this Law “commercial publication”, in relation to a literary, dramatic, musical or artistic work means -

(a) issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public; or

(b) making the work available to the public by means of an electronic retrieval system.

(3) In the case of a work of architecture in the form of a building, or an artistic work incorporated in a building, construction of the building shall be treated as equivalent to publication of the work.

(4) The following do not constitute publication for the purposes of this Law and references to commercial publication shall be construed accordingly -

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

(i) the performance of the work, or

(ii) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system);

(b) in the case of an artistic work -

(i) the exhibition of the work,

(ii) the issue to the public of copies of a graphic work representing, or of photographs of, a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship,

(iii) the issue to the public of copies of a film including the work, or

(iv) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system); and

(c) in the case of a sound recording or film -

(i) the work being played or shown in public, or

(ii) the broadcasting of the work or its inclusion in a cable programme service.

(5) References in this Law to publication or commercial publication do not include publication which is merely colourable and not intended to satisfy the reasonable requirements of the public.

(6) No account shall be taken for the purposes of this Article of any unauthorized act.

#### ARTICLE 232

##### **Requirement of signature: application in relation to body corporate**

(1) The requirement in Articles 97(3)(b), 109(3), 110(1), and 111(1) that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal.

(2) The requirement in Article 97(2)(b) and 106(2) that an instrument be signed by a person is satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal.

#### *Supplemental*

#### ARTICLE 233

##### **Regulations and Orders**

(1) The Committee may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be prescribed under this Law by Order of that Committee.

(2) The States may by Regulations make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be prescribed under this Law by Regulations.

(3) An Order or Regulations made under this Law may -

(a) make different provision in relation to different cases or circumstances;

(b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever; or

(c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Committee or the States, as the case may be, to be necessary or expedient for the purposes of the Order or Regulations.

(4) Regulations made under this Law may create an offence punishable by a fine not exceeding level 4 on the standard scale.<sup>[10]</sup>

(5) An Order made under this Law may, instead of, or as well as, making separate provision, provide that a statutory instrument made under a corresponding provision of Part I of the Copyright, Designs and Patents Act 1988 of the United Kingdom shall have effect in the Island as part of the law of the Island, subject to any exceptions and modifications specified in the Order.

(6) An Order made under this Law may contain transitional provisions and savings relating to the provisions brought into force by the Order.

(7) The Subordinate Legislation (Jersey) Law 1960<sup>[11]</sup> shall apply to an Order made under this Law.

#### ARTICLE 234

## **Modification of Law**

(1) The Committee may by Order provide that, for the purpose of giving effect in the law of the Island to any international obligation of the United Kingdom which extends to the Island or any provision of an Act of Parliament, or of a statutory instrument made under an Act of Parliament, having effect in the United Kingdom and made for the purpose of implementing any obligation of the United Kingdom under the Community Treaties. This Law shall, in relation to the works specified in the Order, have effect subject to any exceptions and modifications so specified.

(2) An Order under this Article shall cease to have effect on the expiration of the period of two years beginning with the date on which it comes into operation.

(3) No Order may be made under this Article so as to renew, or continue the operation of, a previous Order under this Article after the expiration of the period specified in paragraph (2).

(4) On the expiry of an Order under this Article any property right which has come into existence or has been acquired by virtue of this Law as modified by the Order and which subsists immediately before the expiry shall continue to subsist and may be disposed of or otherwise dealt with, or enforced by legal proceedings or otherwise, any right, obligation or liability acquired, accrued or incurred by virtue of this Law as modified by the Order may be enforced by legal proceedings or otherwise and any legal proceedings pending in respect of any of those rights, interests, obligations or liabilities may be continued as if the Order had remained in force.

(5) Where any property right, or any other right, obligation or liability, would at any time have come into existence but for an Order under this Article, the expiry of the Order shall not cause the right, obligation or liability to come into existence, or to be deemed to have come into existence.

(6) Where any property right, or any other right, obligation or liability, would at any time have vested in or been enforceable by or against any person but for an Order under this Article, the expiry of the Order shall not cause the right, obligation or liability to vest in or be enforceable by or against, or to be deemed to have vested in or to have been enforceable by or against, that person.

(7) In this Article “property right” means copyright, and any other right in the nature of copyright arising or coming into existence by virtue of this Law as modified by an Order under this Article, and includes any interest in (including an interest arising under a licence relating to) copyright or that right.

## **ARTICLE 235**

### **Consequential amendments and repeals**

(1) The enactments specified in Column 1 of Part 1 of Schedule 2 are repealed to the extent specified in Column 2 of that Part.

(2) The enactments specified in Part 2 of Schedule 2 are amended in accordance with that Part.

## **ARTICLE 236**

### **Citation and commencement**

This Law may be cited as the Copyright (Jersey) Law 200- and shall come into operation on such day or days as the States may by Act appoint and different days may be appointed for different purposes or different provisions of this Law.

## SCHEDULE 1

### (Article 226)

#### TRANSITIONAL PROVISIONS

##### *Introductory*

1. In this Schedule -

“the 1911 Act” means the Copyright Act 1911 of the United Kingdom;

“the 1949 Act” means the Registered Designs Act 1949 of the United Kingdom;

“commencement” means the commencement of this Law; and

“existing works” means works made before commencement and for this purpose a work of which the making extended over a period shall be taken to have been made when its making was completed.

2. In relation to the 1911 Act -

(a) references in this Schedule to copyright include the right conferred by section 24 of that Act in substitution for the right subsisting immediately before the 5th July 1912;

(b) references in this Schedule to copyright in a sound recording are to the copyright under that Act in records embodying the recording; and

(c) references in this Schedule to copyright in a film are to any copyright under that Act in the film (so far as it constituted a dramatic work for the purposes of that Act) or in photographs forming part of the film.

##### *General principles: continuity of the law*

3. This Law shall apply in relation to things existing at commencement as it applies in relation to things coming into existence after commencement, subject to any express provision to the contrary.

4.-(1) This paragraph shall have effect for securing the continuity of the law so far as this Law reenacts (with or without modification) earlier provisions.

(2) A reference in a statutory provision, instrument or other document to copyright, or to a work or other subject-matter in which copyright subsists, which apart from this Law would be construed as referring to copyright under the 1911 Act shall be construed, so far as may be required for continuing its effect, as being, or including, a reference to copyright under this Law or to works in which copyright subsists under this Law.

(3) Article 19(1) and (2) of the Interpretation (Jersey) Law 1954<sup>[12]</sup> shall have effect in relation to this Law as if the 1911 Act were an enactment repealed by this Law.

(4) This paragraph shall have effect subject to any specific transitional provision or saving and to any express amendment made by this Law.

##### *Subsistence of copyright*

5.-(1) Subject to sub-paragraphs (2) and (3), copyright shall subsist in an existing work after commencement only if copyright would subsist in it if the work were made after commencement.

(2) An existing work may also qualify for copyright protection after commencement -

(a) under Article 185; or

(b) by virtue of an Order under Article 187.

(3) Nothing in this Law shall affect an agreement made before commencement.

6.-(1) Copyright shall not subsist by virtue of this Law in an artistic work which, at the time when the work was made, constituted a design capable of registration under the 1949 Act or under the Acts repealed by that Act, and was used or intended to be used as a model or pattern to be multiplied by an industrial process.

(2) For the purpose of sub-paragraph (1) a design shall be deemed to be used as a model or pattern to be multiplied by an industrial process -

- (a) when the design is reproduced or is intended to be reproduced on more than 50 single articles, unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set of articles as defined in section 50(1) of the 1949 Act; or
- (b) when the design is to be applied to -
  - (i) printed paper hangings,
  - (ii) carpets, floor cloths or oil cloths, manufactured or sold in lengths or pieces,
  - (iii) textile piece goods, or textile goods manufactured or sold in lengths or pieces, or
  - (iv) lace, not made by hand.

7.-(1) Copyright shall subsist after commencement in a film, as a film, made before commencement only if copyright would subsist in it if the film were made after commencement.

(2) Where a film made before commencement was an original dramatic work within the meaning of the 1911 Act, this Law shall have effect in relation to the film as if it was an original dramatic work within the meaning of this Law.

(3) This Law shall have effect in relation to photographs forming part of a film made before commencement of the 1911 Act as it has effect in relation to photographs not forming part of a film.

8.-(1) A film soundtrack in a film made before commencement shall be treated for the purposes of this Law not as part of the film but as a sound recording.

(2) Notwithstanding sub-paragraph (1) -

(a) copyright shall subsist in the sound recording after commencement if -

- (i) copyright subsisted in the film immediately before commencement, or
- (ii) copyright would subsist in the film if it were made after commencement,

and it shall continue to subsist until copyright in the film expires;

(b) the author and first owner of copyright in the film shall be treated as having been author and first owner of the copyright in the sound recording; and

(c) anything done before commencement under or in relation to the copyright in the film shall continue to have effect in relation to the sound recording as in relation to the film.

9. Copyright shall subsist after commencement in a broadcast made before commencement, or in a cable programme included in a cable programme service before commencement, only if copyright would subsist in it if the broadcast or cable programme were made after commencement, and any other broadcast or cable programme shall be disregarded for the purposes of Article 19(5).

#### *Authorship of work*

10. The authorship of an existing work shall be determined in accordance with this Law for the purposes of the rights conferred by Part 5, and for all other purposes shall be determined in accordance with the law in force at the time the work was made.

### *First ownership of copyright*

11.-(1) The first ownership of copyright in an existing work shall be determined in accordance with the law in force at the time the work was made.

(2) Where before commencement a person commissioned the making of a work in circumstances falling within paragraph (a) of the proviso to section 5(1) of the 1911 Act, that provision shall apply to determine first ownership of copyright in any work made in pursuance of the commission after commencement.

### *Duration of copyright in existing works*

12.-(1)(a) This paragraph shall have effect with respect to the duration of copyright in existing works.

(b) The question of which provision applies to a work shall be determined by reference to the facts immediately before commencement.

(c) Expressions used in this paragraph which were defined for the purposes of the 1911 Act shall have the same meaning as in that Act.

(2) Copyright in the literary, dramatic, musical or artistic work shall continue to subsist until the date on which it would have expired under the 1911 Act.

(3) Copyright in -

(a) literary, dramatic and musical works the author of which has died and in relation to which none of the acts mentioned in the proviso to section 3 of the 1911 Act has been done;

(b) unpublished engravings the author of which has died; and

(c) unpublished photographs taken on or after 1st July 1912,

shall continue to subsist until the end of the period of 50 years from the end of the calendar year in which this Law comes into force.

(4) Copyright in unpublished sound recordings made on or after 1st July 1912 shall continue to subsist until the end of the period of 50 years from the end of the calendar year in which this Law comes into force, unless the recording is published before the end of that period, in which case copyright in it shall continue until the end of the period of 50 years from the end of the calendar year in which the recording is published.

(5) Copyright in any other description of existing work shall continue to subsist until the date on which copyright in that description of work expires in accordance with Articles 16 to 21.

### *Acts infringing copyright*

13.-(1) The provisions of Parts 2 and 3 as to the acts constituting an infringement of copyright shall, except for acts done after commencement in pursuance of an agreement made before commencement, apply only in relation to acts done after commencement and the provisions of the 1911 Act shall continue to apply in relation to acts done before commencement.

(2) So much of Article 24(2) as extends the restricted act of issuing copies to the public to include the rental to the public of copies of sound recordings, films or computer programs shall not apply in relation to a copy of a sound recording, film or computer program acquired by any person before commencement for the purpose of renting it to the public.

(3) For the purposes of Article 34, the question of whether the making of an article constituted an infringement of copyright, or would have done if the article had been made in the Island, shall be determined -

(a) in relation to an article made on or after 1st July 1912 and before commencement, by reference to the 1911 Act; and

(b) in relation to an article made before 1st July 1911, by reference to any Act of Parliament repealed by the

1911 Act which was then in force in the Island.

(4) For the purposes of the application of Articles 38(2), 69(2) and 80(2)(d) to things made before commencement, it shall be assumed that this Law was in force at all material times.

(5) Article 73 shall apply where articles have been marketed as mentioned in Article 73(1) before commencement, with the substitution for the period mentioned in Article 73(2) of the period of 25 years from the end of the calendar year in which this Law comes into force.

(6) Article 74 shall not apply in relation to a copy purchased before commencement.

(7) In Article 83 the reference to the owner of the copyright in the drawings or plans shall be, in relation to buildings constructed before commencement, to the person who at the time of the construction was the owner of the copyright in the drawings or plans under the 1911 Act or any Act of Parliament repealed by that Act.

14.-(1) Article 75 shall have effect in relation to existing works subject to sub-paragraphs (2) and (3).

(2) Article 75(1)(b)(i) shall not apply in relation to photographs.

(3) Article 75 (1)(b)(ii) shall apply only -

(a) where paragraph 12(3)(b) applies, after the end of the period of 50 years from the end of the calendar year in which this Law comes into force; or

(b) where paragraph 12(5) applies.

15. The provisions of section 15 of the 1911 Act shall continue to apply in relation to existing works.

16. Where, in the case of a dramatic or musical work made before 1st July 1912, the right conferred by the 1911 Act did not include the sole right to perform the work in public, the acts restricted by the copyright shall be treated as not including performing the work in public, broadcasting the work or including it in a cable programme service or doing any of the above in relation to an adaptation of the work, and where the right conferred by the 1911 Act consisted only of the sole right to perform the work in public, the acts restricted by the copyright shall be treated as consisting only of those acts.

17. Where a work made before 1st July 1912 consists of an essay, article or portion forming part of, and first published in, a review, magazine or other periodical or work of a like nature, the copyright shall be subject to any right of publishing the essay, article or portion in a separate form to which the author was entitled on that date, or would if the 1911 Act had not been passed have become entitled under section 18 of the Copyright Act 1842 of the United Kingdom.

#### *Designs*

18. Article 69 shall not apply for 10 years after commencement in relation to a design recorded or embodied in a design document or model before commencement.

#### *Moral rights*

19. No act done before commencement shall be actionable by virtue of any provision of Part 5.

20.-(1) This paragraph shall have effect with respect to the rights conferred by Articles 96 and 99.

(2) The rights shall not apply -

(a) in relation to a literary, dramatic, musical or artistic work of which the author died before commencement; or

(b) in relation to a film made before commencement.

(3) The rights 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 commencement may be done without infringing copyright; or



- (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.

21. The right conferred by Article 104 shall not apply to photographs taken or films made before commencement.

#### *Assignments and licences*

22.-(1) Any document made or event occurring before commencement which operated to affect the ownership of the copyright in an existing work or to create, transfer or terminate an interest, right or licence in respect of the copyright in an existing work shall operate correspondingly in relation to copyright in the work under this Law.

(2) Expressions used in a document mentioned in sub-paragraph (1) shall be construed in accordance with their effect immediately before commencement.

23.-(1) Where the author of a literary, dramatic, musical or artistic work was the first owner of the copyright in it no assignment of the copyright and no grant of any interest in it, made by him (otherwise than by will) after the passing of the 1911 Act shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years from the death of the author.

(2) The reversionary interest in the copyright expectant on the termination of the period referred to in sub-paragraph (1) may after commencement be assigned by the author during his life but in the absence of any assignment shall on his death, devolve as part of his estate.

(3) Nothing in this paragraph shall affect -

(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 any person becoming entitled to it;  
or

(c) an assignment of the copyright after the reversionary interest has fallen in.

(4) Nothing in this paragraph shall 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 sub-paragraph (4) "collective work" means -

(a) an encyclopaedia, dictionary, yearbook or similar work;

(b) a newspaper, review, magazine or similar periodical; and

(c) a work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

24. This paragraph shall apply where copyright subsists in a literary, dramatic, musical or artistic work made before 8th March 1913 in relation to which the author, before that date, made an assignment or grant mentioned in paragraph (a) of the proviso to section 24(1) of the 1911 Act.

25. Article 111(2) shall not apply in relation to an exclusive licence granted before commencement.

#### *Bequests*

26.-(1) Article 112

(a) shall not apply where the testator died before 8th March 1913; and

(b) where the testator died on or after that date and before commencement, shall apply only in relation to an original document embodying a work.

(2) In the case of an author who died before 8th March 1913, the ownership after his death of a manuscript of

his, where that ownership has been acquired under a testamentary disposition made by him and the manuscript is of a work which has not been published or performed in public, shall be prima facie proof of the copyright being with the owner of the manuscript.

#### *Remedies for infringement*

27.-(1) Articles 118 and 119 shall apply only in relation to an infringement of copyright committed after commencement and sections 6 and 11 of the 1911 Act shall continue to apply in relation to infringements committed before commencement.

(2) Articles 120 and 121 shall apply to infringing copies and other articles made before or after commencement and section 7 of the 1911 Act shall not apply after commencement except for the purposes of proceedings begun before commencement.

(3) Articles 122 and 123 shall apply where Articles 118 to 121 apply.

(4) Articles 125 to 127 shall apply only in proceedings brought by virtue of this Law.

28. Article 128 shall apply only in relation to acts done after commencement and section 11 of the 1911 Act shall continue to apply in relation to acts done before commencement.

#### *Qualification for copyright protection*

29. Every work in which copyright subsisted under the 1911 Act immediately before commencement shall be deemed to satisfy the requirements of this Law as to qualification for copyright protection.

#### *Application to other countries*

30.-(1) Until an Order is made under Article 187 in relation to a country specified in sub-paragraph (2), Articles 184 to 186 shall apply in relation to that country as if provision were made in that Order for the application of those Articles in relation to that country.

(2) The countries referred to in sub-paragraph (1) are -

(a) the United Kingdom;

(b) any of the British Islands;

(c) subject to sub-paragraph (3), any colony of the United Kingdom to which any of the Copyright Acts extended immediately before commencement; and

(d) any country to which paragraph 37 of Schedule 1 to the Copyright, Designs and Patents Act 1988 of the United Kingdom applies which is for the time being treated, by virtue of that paragraph, as a country to which Part I of that Act extends for the purposes of sections 161 to 163 of that Act.

(3) Sub-paragraph (1) shall cease to apply to a colony referred to in sub-paragraph (2)(c) if it ceases, by virtue of an Order in Council under section 165(3)(b) of the Copyright, Designs and Patents Act 1988 of the United Kingdom (including that section as applied by paragraph 36(5) of Schedule 1 to that Act), to be treated as a country to which any of the Copyright Acts extend.

(4) In this paragraph -

(a) "colony" has the meaning given in Schedule 1 of the Interpretation Act 1978 of the United Kingdom; and

(b) "the Copyright Acts" means the 1911 Act, the Copyright Act 1956 of the United Kingdom and Part I of the Copyright, Designs and Patents Act 1988 of the United Kingdom.

#### *Territorial waters*

31. Article 189 shall not apply in relation to anything done before commencement.

*Jersey ships*

32. Article 190 shall not apply in relation to anything done before commencement.

*Crown copyright etc.*

33. Article 210 shall apply to an existing work only if copyright subsisted in it immediately before commencement and such copyright was vested in the Crown.

34.-(1)(a) This paragraph shall have effect with respect to the duration of copyright in existing works to which Article 210 applies.

(b) The question of which provision applies to a work shall be determined by reference to the facts immediately before commencement.

(2) Copyright in -

- (a) published literary, dramatic or musical works;
- (b) artistic works other than engravings or photographs;
- (c) published engravings;
- (d) published photographs;
- (e) published sound recordings; and
- (f) published films,

shall continue to subsist until the date on which it would have expired in accordance with the 1911 Act.

(3) Copyright in unpublished literary, dramatic or musical works shall continue to subsist until the later of -

- (a) the date on which copyright expires in accordance with Article 210(3); or
- (b) the end of the period of 50 years from the end of the calendar year in which this Law comes into force.

(4) Copyright in -

- (a) unpublished engravings; and
- (b) unpublished photographs,

shall continue to subsist until the end of the period of 50 years from the end of the calendar year in which this Law comes into force.

(5) Copyright in a film or sound recording not falling within sub-paragraph (2) shall continue to subsist until the end of the period of 50 years from the end of the calendar year in which this Law comes into force, unless the film or recording is published before the end of that period, in which case copyright shall expire 50 years from the end of the calendar year in which it is published.

35. Subject to paragraph 33, Article 210(5) shall apply to an existing work, other than a work

- (a) the copyright in which was immediately before commencement vested in a Department (other than the Treasury), a Statutory Board or a department of the government of the United Kingdom; or
- (b) the copyright in which was been assigned to any other person before commencement.

36.-(1) Article 211 shall apply to Laws of Jersey, Acts of Parliament of the United Kingdom and Measures of the General Synod of the Church of England made before commencement only if copyright subsisted in such Laws, Acts of Parliament and Measures immediately before commencement and such copyright was vested in the Crown.

(2) References in that Article to Measures of the General Synod of the Church of England shall include Church Assembly Measures.

*States copyright*

37.-(1) Article 212 shall apply after commencement to existing unpublished literary, dramatic, musical or artist works if -

- (a) copyright subsisted in it immediately before commencement and such copyright was vested in the States or the body by whom, or under whose control or direction, the work is made; or
  - (b) copyright would have subsisted in it if the work were made after commencement.
- (2) Article 213 shall not apply to a Projet de Loi which was lodged au Greffe before commencement.

*Copyright vesting in certain international organizations*

38.-(1) Any work in which copyright subsisted immediately before commencement shall be deemed to satisfy the requirements of Article 215(1) but otherwise Article 215 shall only apply after commencement to a work made or published before commencement if copyright would have subsisted in it if the work were made after commencement.

(2) Copyright in any work referred to in sub-paragraph (1) which is unpublished shall continue to subsist until the end of the period of 50 years from the end of the calendar year in which this Law comes into force.

*Meaning of "publication"*

39. Article 231(3) shall apply only where the construction of the building began after commencement.

*Meaning of "unauthorized"*

40. For the purposes of the application of the definition in Article 1 of the expression "unauthorized" in relation to things done before commencement -

- (a) paragraph (b) shall apply with the substitution for the words "or, in a case where Article 15(2) would have applied, the author's employer or, in either case, persons lawfully claiming under him", of the words "or any person lawfully claiming under him"; and
- (b) paragraph (c) shall be deleted.

*Regulations may make savings or transitional provisions or consequential changes*

41.-(1) Regulations made under this Law may contain provisions of a saving or transitional nature consequent on the enactment of this Law.

(2) Regulations made under this Law may contain provisions modifying any enactment in consequence of the enactment of this Law.

(3) Any provision referred to in sub-paragraph (1) or (2) may, if the Regulations so provide, come into force on the day on which this Schedule comes into force or on a later day.

(4) To the extent to which any such provision comes into force on a date that is earlier than the date of its promulgation, the provision shall not operate so as -

- (a) to affect, in a manner prejudicial to any person (other than the States or an authority of the States), the rights of that person existing before the date of its promulgation; or
- (b) to impose liabilities on any person (other than the States or an authority of the States) in respect of anything done or omitted to be done before the date of its promulgation.

*SCHEDULE 2*

**(Article 235)**

REPEALS AND AMENDMENT OF ENACTMENTS

*PART 1*

REPEALS

*Column 1*

*Column 2*

**Enactment**

**Extent of Repeal**

Loi (1908) au sujet des droits de compositeur <sup>[13]</sup>	The whole Law
Loi (1913) au sujet des droits d'auteur <sup>[14]</sup>	The whole Law
Planning and Building (Jersey) Law 2002 <sup>[15]</sup>	Article 11(6)

*PART 2*

AMENDMENT OF ENACTMENTS

*The Medicines (Jersey) Law 1994*

In Article 87 of the Medicines (Jersey) Law 1995<sup>[16]</sup> -

- (a) in paragraph (1), for the words “or by the exhibition of a photograph or a cinematograph film, or by way of sound recording, sound broadcasting or television” there shall be substituted the words “or by means of a photograph, film, sound recording, broadcast or cable programme service,”;
- (b) in paragraph (2), for sub-paragraphs (a) and (b) there shall be substituted the words “words forming part of a sound recording or broadcast or included in a cable programme”;
- (c) for paragraph (6) there shall be substituted-

“(6) In this Article ‘film’, ‘sound recording’, ‘broadcast’, ‘cable programme’, ‘cable programme service’ and related expressions have the same meanings as in the Copyright (Jersey) Law 200-<sup>[17]</sup>.”.

### SCHEDULE 3

#### (Article 199)

#### EXCEPTIONS TO DATABASE RIGHT FOR PUBLIC ADMINISTRATION

##### *States and judicial proceedings*

1. Database right in a database shall not be infringed by anything done for the purposes of proceedings in the States Assembly or judicial proceedings or for the purposes of reporting such proceedings.

##### *Committee of Inquiry*

2.-(1) Database right in a database shall not be infringed by anything done for

- (a) the purposes of the proceedings of a Committee of Inquiry or a statutory inquiry; or
- (b) the purpose of reporting any such proceedings held in public.

(2) Database right in a database shall not be infringed by the issue to the public of copies of the report of a Committee of Inquiry or a statutory inquiry containing the contents of the database.

##### *Material open to public inspection or on official register*

3.-(1) Where the contents of a database are open to public inspection pursuant to a statutory requirement, or are on a statutory register, database right in the database shall not be infringed by the extraction of all or a substantial part of the contents containing factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve re-utilisation of all or a substantial part of the contents.

(2) Where the contents of a database are open to public inspection pursuant to a statutory requirement, database right in the database shall not be infringed by the extraction or re-utilisation of all or a substantial part of the contents, by or with the authority of the appropriate person, for the purpose of enabling the contents to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.

(3) Where the contents of a database which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contain information about matters of general scientific, technical, commercial or economic interest, database right in the database shall not be infringed by the extraction or re-utilisation of all or a substantial part of the contents, by or with the authority of the appropriate person, for the purpose of disseminating that information.

(4) In this paragraph -

“appropriate person” means 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;

“statutory register” means a register maintained in pursuance of a statutory requirement; and

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

##### *Material communicated to the Crown or the States in the course of public business*

4.-(1) This paragraph shall apply where the contents of a database have in the course of public business been communicated to the Crown or the States, or a Committee or an administration of the States for any purpose, by or with the licence of the owner of the database right and a document or other material thing recording or embodying the contents of the database is owned by or in the custody or control of the States.

(2) The Crown or the States, or a Committee or an administration of the States, may, for the purpose for which the contents of the database were communicated to it, or any related purpose which could reasonably have been anticipated by the owner of the database right in the database, extract or re-utilise all or a substantial part of the contents without infringing database right in the database.

(3) The Crown or the States, or a Committee or an administration of the States, may not re-utilise the contents of a database by virtue of this paragraph if the contents have previously been published otherwise than by virtue of this paragraph.

(4) In sub-paragraph (1) “public business” includes any activity carried on by the Crown or the States, or a Committee or an administration of the States.

(5) This paragraph has effect subject to any agreement to the contrary between the Crown or the States, or a Committee or an administration of the States and the owner of the database right in the database.

*Public records*

5. The contents of a database which are comprised in records which are open to public inspection at the Public Registry, the Jersey Museum or at the Office of the Superintendent Registrar may be re-utilised, and a copy may be supplied to any person, by or with the authority of the Judicial Greffier, the Director of the Museum, or the Superintendent Registrar, without infringement of database right in the database.

*Acts done under statutory authority*

6.-(1) Where the doing of a particular act is specifically authorized by an enactment, whenever passed, then, unless the enactment provides otherwise, the doing of that act shall not infringe database right in a database.

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

## SCHEDULE 4

### (Article 203)

#### LICENSING OF DATABASE RIGHT

##### *Licensing scheme and licensing bodies*

1.-(1) In this Schedule a "licensing scheme" means a scheme setting out -

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant database right licences; and
- (b) the terms on which licences would be granted in those classes of case,

and for this purpose a "scheme" includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) In this Schedule a "licensing body" means a society or other organization which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner of a database right or as agent for him, of database right licences, and whose objects include the granting of licences covering the databases of more than one maker.

(3) In this paragraph "database right licences" means licences to do, or authorize the doing of, any of the things for which consent is required under Article 195.

2. Paragraphs 3 to 8 shall apply to licensing schemes which are operated by licensing bodies and cover databases of more than one maker so far as they relate to licences for extracting or re-utilising all or a substantial part of the contents of a database; and references in those paragraphs to a licensing scheme shall be construed accordingly.

##### *Reference of proposed licensing scheme to Tribunal*

3.-(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Tribunal by an organization claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

##### *Reference of licensing scheme to Tribunal*

4.-(1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and

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

that person or organization may refer the scheme to the Tribunal in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Tribunal under this paragraph shall remain in operation until proceedings on the reference are concluded.

(3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.



- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

*Further reference of scheme to Tribunal*

5.-(1) Where the Tribunal has on a previous reference of a licensing scheme under paragraph 3 or 4, or under this paragraph, made an order with respect to the scheme, then, while the order remains in force -

- (a) the operator of the scheme;
- (b) a person claiming that he requires a licence in a case of the description to which the order applies; or
- (c) an organization claiming to be representative of such persons,

may refer the scheme again to the Tribunal so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases -

- (a) within twelve months from the date of the order on the previous reference; or
- (b) if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order.

(3) A scheme which has been referred to the Tribunal under this paragraph shall remain in operation until proceedings on the reference are concluded.

(4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

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

6.-(1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Tribunal.

- (2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either -
- (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted; or
  - (b) proposes terms for a licence which are unreasonable,

may apply to the Tribunal.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of sub-paragraph (2) if -

- (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or
- (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

*Application for review of order as to entitlement to licence*

7.-(1) Where the Tribunal has made an order under paragraph 6 that a person is entitled to a licence under licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.

- (2) An application shall not be made, except with the special leave of the Tribunal -
- (a) within twelve months from the date of the order, or of the decision on a previous application under this paragraph; or
- (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last three months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

*Effect of order of Tribunal as to licensing scheme*

8.-(1) A licensing scheme which has been confirmed or varied by the Tribunal under paragraph 3, 4 or 5 shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

- (2) While the order is in force a person who in a case of a class to which the order applies -
- (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained; and
- (b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of database right as if he had at all material times been the holder of a licence granted by the owner of the database right in question in accordance with the scheme.

(3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

If such a direction is made -

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and
- (b) the reference in sub-paragraph (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

No such direction may be made where sub-paragraph (4) applies.

(4) Where the Tribunal has made an order under paragraph 6 and the order remains in force, the person in whose favour the order is made shall if he -

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

be in the same position as regards infringement of database right as if he had at all material times been the holder of a licence granted by the owner of the database right in question on the terms specified in the order.

*References and applications with respect to licences by licensing bodies*

9. Paragraphs 10 to 13 apply to licences relating to database right which cover databases of more than one maker granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorize extracting or re-utilising all or a substantial part of the contents of a database; and references in those paragraphs to a licence shall be construed accordingly.

*Reference to Tribunal of proposed licence*

10.-(1) The terms on which a licensing body proposes to grant a licence may be referred to the Tribunal by the prospective licensee.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

*Reference to Tribunal of expiring licence*

11.-(1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such an application may not be made until the last three months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.

(4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.

(5) An order of the Tribunal under this paragraph may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

*Application for review of order as to licence*

12.-(1) Where the Tribunal has made an order under paragraph 10 or 11, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.

(2) An application shall not be made, except with the special leave of the Tribunal -

(a) within twelve months from the date of the order or of the decision on a previous application under this paragraph; or

(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last three months before the expiry date.

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

*Effect of order of Tribunal as to licence*

13.-(1) Where the Tribunal has made an order under paragraph 10 or 11 and the order remains in force, the person entitled to the benefit of the order shall if he -

(a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be

ascertained, gives an undertaking to pay the charges when ascertained; and

- (b) complies with the other terms specified in the order,

be in the same position as regards infringement of database right as if he had at all material times been the holder of a licence granted by the owner of the database right in question on the terms specified in the order.

- (2) The benefit of the order may be assigned -

- (a) in the case of an order under paragraph 10, if assignment is not prohibited under the terms of the Tribunal's order; and
- (b) in the case of an order under paragraph 11, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order under paragraph 10 or 11, or an order under paragraph 12 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

If such a direction is made -

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and
- (b) the reference in sub-paragraph (1)(a) to the charges payable in accordance with the order shall be construed where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

*General considerations: unreasonable discrimination*

14. In determining what is reasonable on a reference or application under this Schedule relating to a licensing scheme or licence, the Tribunal shall have regard to -

- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances; and
- (b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

---

[1] Dr Stephen Chiang, IT Director - Policy and Resources replaced Peter Griffiths in 2002.

[2] Volume 1973-1974, page 98, Volume 1979-1981, page 333, Volume 1986-1987, page 400 and R&Os 7452, 8754, 8930 and 9361.

[3] Volume 1966-1967, page 18 and Volume 1996-1997, pages 11 and 803.

[4] Volume 1973-1974, page 99.

[5] Volume 1992-1993, page 437.

[6] Volume 2000, page 243.

[7] Volume 1990-1991, page 890 and Volume 2002, page 184.

[8] Volume 1998, page 441 and Volume 1999, page 521.

[9] Volume 1992-1993, page 437.

[10] Volume 1992-1993, page 437.

[11] Tome VIII, page 849 and Volume 2001, pages 3 and 4.

[12] Tome VIII, page 384.

[13] Toms IV-VI, page 267.

[14] Toms IV-VI, page 311.

[15] This Law is currently awaiting Privy Council sanction.

[16] Volume 1994-1995, page 541.

[17] P.160/2002.