

**CONSTITUTION OF BRUNEI DARUSSALAM**

**(Order under section 83(3))**

**EMERGENCY (COPYRIGHT) ORDER, 1999**

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**CONSTITUTION OF BRUNEI DARUSSALAM**  
**(Order under section 83(3))**

**EMERGENCY (COPYRIGHT) ORDER, 1999**

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

**PRELIMINARY**

**Citation, commencement, long title and application.**

1. (1) This Order may be cited as the Emergency (Copyright) Order, 1999 and shall commence on the day to be appointed by the Attorney General, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is “An Order in respect of copyright and related matters”.

(3) This Order applies to things done –

(a) in or on the continental shelf (being the area proclaimed by His Highness the Sultan on 30th. June, 1954 by the Continental Shelf Proclamation 1954) on a structure or vessel which is present there for purposes directly connected with the exploration of the seabed and its subsoil or with the exploitation of their natural resources;

(b) on a Brunei Darussalam ship, as defined in section 2 of the Merchant Shipping Act; and

(c) on an aircraft or hovercraft registered in Brunei Darussalam,  
as it applies to things done in Brunei Darussalam,

## **Interpretation.**

2. (1) In this Order, unless the context otherwise requires –

“Act” means a law enacted by the Legislative Council;

“acts restricted by copyright” shall be construed in accordance with section 18;

“adaptation”, in relation to a literary or dramatic work, or to a musical work, shall be construed in accordance with subsection (3) of section 23;

“architectural work of art”, in paragraph (a) of the definition in this subsection of “artistic work”, means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that any protection afforded by any law relating to copyright in force immediately before commencement was confined to such artistic character or design and did not extend to the process or methods of construction;

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

“artistic work” –

(a) in the First Schedule, includes works of painting, drawing, sculpture (including casts and models) and artistic craftsmanship, and architectural works of art, and engravings and photographs;

(b) elsewhere in this Order, shall be construed in accordance with section 6,

but does not include a layout design or an integrated circuit as respectively defined in section 2 of the Emergency (Layout Designs) Order, 1999;

“assignment” means assignment by act of the parties;

“author”, in relation to a work, shall be construed in accordance with subsection (1) of section 11;

“broadcast” shall be construed in accordance with subsection (1) of section 8;

“building” shall be construed in accordance with section 6;

“business” includes any trade or profession;

“cable programme” shall be construed in accordance with subsection (1) of section 9;

“cable programme service” shall be construed in accordance with section 9;

“claimant”, in sections 109, 110, 112, 113 and 116, means a person who has given a notice under subsection (1) of section 109;

“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;

“commencement” means the day appointed for the commencement of this Order;

“commercial publication”, in relation to a literary, dramatic, musical or artistic work, shall be construed in accordance with section 178;

“computer program” means an expression, in any language, code or notation, of a set of instructions (whether with or without related information) intended, either directly or after either or both of the following –

(a) the conversion to another language, code or notation;  
(b) the reproduction in a different material form,  
to cause a device having information-processing capabilities to perform a particular function;

“computer-generated”, in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work;

“controller of Customs” means the Controller of Customs for the purposes of the Customs Order, 2006 (S 39/2006);

[S 92/2013]

“copy”, in Part I, shall be construed in accordance with section 19;

“copyright owner” shall (depending on the context) be construed in accordance with subsections (4) or (5) of this section, subsection (2) of section 103, or in accordance with such other provision of this Order as the circumstances may require;

“Copyright Tribunal” means the tribunal established by subsection (1) of section 154;

“copyright work” shall be construed in accordance with subsection (2) of section 3;

“country” includes any territory;

“court” means the High Court or an Intermediate Court;

“customs control” has the same meaning as in subsection (2) of section 2 of the Customs Order, 2006 (S 39/2006);

[S 92/2013]

“dramatic work” –

(a) in the First Schedule, includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

(b) elsewhere in this Order, shall be construed in accordance with subsection (1) of section 5;

“educational establishment” shall be construed in accordance with subsection (1) of section 177;

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

“employment” refers to employment under a contract of service or of apprenticeship;

“engravings”, in the First Schedule, includes etchings, lithographs, woodcuts, prints and other similar works, not being photographs;

“exclusive licence” has the same meaning as in subsection (1) of section 95;

“exclusive recording contract” shall be construed in accordance with subsection (1) of section 189;

“existing work”, in the First Schedule, refers to a work 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;

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

“film” shall be construed in accordance with subsection (1) of section 7;

“future copyright”, in Part I, shall be construed in accordance with subsection (2) of section 94;

“Government copyright” shall be construed in accordance with subsection (2) of section 167;

“graphic work” shall be construed in accordance with section 6;

“illicit recording”, in relation to a performance, shall be construed in accordance with section 201;

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

“infringing article” has the same meaning as in section 86;

“infringing copy”, in relation to a copyright work, shall be construed in accordance with section 31;

“international organisation” means an organisation of which the government or governments of one or more countries are members;

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

“Legislative Council copyright” shall be construed in accordance with subsection (2) of section 169;

“licence”, in sections 129, 130 and 132, means a licence of any of the descriptions mentioned in section 128;

“licensing body” has the same meaning as in subsection (2) of section 120;

“licensing scheme”, subject to section 121, has the same meaning as in subsection (1) of section 120;

“literary work” –

(a) in the First Schedule, includes maps, charts, plans, tables and compilations;

(b) elsewhere in this Order, shall be construed in accordance with subsection (1) of section 5;

“musical work” shall be construed in accordance with subsection (1) of section 5;

“officer of customs” has the same meaning as in subsection (1) of section 2 of the Customs Act;

“owner of copyright” has the same meaning as “copyright owner”;

“performance” shall be construed –

(a) in Part I in relation to a work, in accordance with subsection (2) of section 21;

(b) in Part II, in accordance with subsection (2) of section 180;

“photograph” shall be construed in accordance with section 6;

“prospective owner”, in Part I, shall be construed in accordance with subsection (2) of section 94;

“publication”, in relation to a work, shall be construed in accordance with section 178;

“published edition”, in the context of copyright in the typographical arrangement of a published work, shall be construed in accordance with subsection (1) of section 10;

“qualifying performance”, in Part II, shall be construed in accordance with section 181;

“qualifying person”, in Part II, means a person to whom that Part applies;

“recording”, in Part II in relation to a performance, shall be construed in accordance with section 180;

“rental” means any arrangement under which a copy of a work is made available –

(a) for payment in money or money’s worth; or

(b) in the course of a business, as part of services or amenities for which payment is made,  
on terms that it will or may be returned;

“reprographic copying” refers 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;



“sculpture” shall be construed in accordance with section 6;

“sound recording” –

(a) in sections 140, 142 and 144, does not include a film sound-track when accompanying a film;

(b) elsewhere in this Order, shall be construed in accordance with subsection (1) of section 7;

“sufficient acknowledgement” means an acknowledgement identifying a work 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 subsection (1) of section 83, 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;

“terms of payment”, in sections 141, 142, 143 and 146, means terms as to payment for including sound recordings in a broadcast or cable programme service;

“transmission” means transfer by operation of law, devolution on the personal representative of a deceased person, or any other mode of transfer other than an assignment;

“typeface” includes an ornamental motif used in printing;

“unauthorised”, as regards anything done in relation to a work, means done otherwise than –

(a) by or with the licence of the copyright owner;

(b) if copyright does not subsist in the work, by or with the licence of the author or, in a case where subsection (2) of section 13 would have applied, the author’s employer or, in either case, any person lawfully claiming under him; or

(c) under section 52;

“wireless telegraphy” means the sending of electromagnetic energy over paths not provided by a material substance constructed or arranged for that purpose;

“work of joint authorship” shall be construed in accordance with subsection (1) of section 12;

“work of unknown authorship” shall be construed in accordance with subsection (4) of section 11;

“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.

(2) A provision of Part I, which corresponds to a provision of any law relating to copyright in force immediately before commencement, shall not be construed as departing from such a law merely because of a change of expression.

(3) Decisions under any law relating to copyright in force immediately before commencement may be referred to for the purpose of establishing whether a provision of Part I departs from such a law, or otherwise for establishing the true construction of that Part.

(4) 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 Part I is the person who is entitled to the aspect of copyright relevant for that purpose.

(5) Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in Part I to the copyright owner are to all the owners, so that any requirement of the licence of the copyright owner requires the licence of all of them.

(6) Where reference is made in this Order to an imported article the making of which was carried out without the consent of the owner of the copyright, the reference to the owner of the copyright shall be read as a reference to –

(a) the person entitled to the copyright in respect of its application to the making of an article of that description in the country where it was made; or

(b) if there is no person entitled to the copyright in respect of its application to the making of an article of that description in the country where it was made, the person entitled to the copyright in respect of that application in Brunei Darussalam,

and the making of the article shall be deemed to have been carried out with the consent of that owner if, after disregarding all conditions as to the sale, distribution or other dealings in the article after its making, the article was made with his licence

## **PART I**

### **COPYRIGHT**

#### **CHAPTER I**

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

##### **Introductory**

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

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

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

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

(3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection have been met.

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

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

(2) In relation to certain descriptions of copyright work, the rights conferred by sections 80, 83 and 88 subsist in favour of the author, director or commissioner of the work, whether or not he is the owner of the copyright.

## Descriptions of work and related provisions

### Literary, dramatic and musical works.

5. (1) In this Order –

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

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

(a) a computer program; and

(b) a table or compilation of data or other material, whether in machine readable or other form, original by reason of the selection or arrangement of its contents;

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

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

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

**Artistic works.**

**6.** In this Order –

“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;

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

“graphic work” includes –

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

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

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

**Sound recordings and films.**

**7.** In this Order –

“film” means a recording on any medium from which a moving image may by any means be produced;

“sound recording” means –

(a) a recording of sounds, from which the sounds may be reproduced; or  
(b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced, regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

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

### **Broadcasts.**

8. (1) In this Order, a broadcast means a transmission by wireless telegraphy of visual images, sounds or other information which –

- (a) is capable of being lawfully received by members of the public; or  
(b) is transmitted for presentation to members of the public.

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

(3) References in this Part to the person making a broadcast, 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 Part to a programme, in the context of broadcasting, are to any item included in a broadcast.

(4) For the purpose of this Part, the place from which a broadcast is made, in the case of a satellite transmission, is the place from which the signals carrying the broadcast are transmitted to the satellite.

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

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

### **Cable programmes.**

9. (1) In this Order –

(a) a cable programme means any item included in a cable programme service; and

(b) a 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 –

(i) at two or more places (whether for simultaneous reception or at different times in response to requests by different users); or

(ii) for representation to members of the public,

and which is not, or so far as it is not, excepted by or under subsections (2) or (3).

(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 (as the case may be) 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 other persons; and
  - (iii) the system is not connected to any other telecommunications 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 telecommunications system;
- (d) services where –
- (i) all the apparatus comprised in the system is situated in, or connects, places which are in single occupation; and
  - (ii) 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;
- (e) services which are, or to the extent that they are, run for persons providing broadcasting or cable programme services or providing programmes for such services.

(3) The Attorney General, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may by order amend subsection (2) so as to add or delete exceptions, subject to such transitional provisions as appear to him to be appropriate.

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

- (5) Copyright does not subsist in a cable programme –
- (a) if it is included in a cable programme service by reception and immediate retransmission 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.

**Published editions.**

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

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

**Authorship and ownership of copyright**

**Authorship of work.**

11. (1) In this Order, “author”, in relation to a work, means the person who created it.
- (2) That person shall be taken to be –
- (a) in the case of a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film were undertaken;
  - (b) in the case of a broadcast, the person making the broadcast or, in the case of a broadcast which relays another broadcast by reception and immediate retransmission, the person making that other broadcast;
  - (c) in the case of a cable programme, the person providing the cable programme service in which the programme was included;
  - (d) in the case of the typographical arrangement of a published edition, the publisher.

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

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

#### **Works of joint authorship.**

**12.** (1) In this Order, 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 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.

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

#### **First ownership of copyright.**

**13.** (1) The author of a work is the first owner of any copyright in it, subject to subsections (2) and (3).

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

(3) This section does not apply to Government copyright, Legislative Council copyright and copyright which subsists under section 172.

### **Duration of copyright**

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

**14.** (1) Copyright in a literary, dramatic, musical or artistic work will expire at the end of the period of fifty years from the end of the year in which the author dies, subject to the following provisions of this section.

(2) If the work is of unknown authorship, copyright will expire at the end of the period of fifty years from the date on which the work was either made, first made available to the public or first published, whichever date is the latest, provided that where the author's identity is revealed or is no longer in doubt before the expiration of that period, the provisions of subsection (1) shall apply.

For this purpose, making available to the public includes –

- (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,

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

(3) If the work is computer-generated, subsections (1) and (2) do not apply and copyright will expire at the end of the period of fifty years from the end of the year in which it was made.

- (4) In relation to a work of joint authorship –
- (a) the reference in subsection (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 known, as a reference to the death of the last of the authors whose identity is known; and
  - (b) the reference in subsection (2) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known.

(5) This section does not apply to Government copyright, Legislative Council copyright and copyright which subsists under section 172.

**Duration of copyright in sound recording and films.**

15. (1) Copyright in a sound recording or film will expire –
- (a) at the end of the period of fifty years from the end of the year in which it was made; or
  - (b) if it was released before the end of that period, fifty years from the end of the year in which it was released.
- (2) A sound recording or film is released when –
- (a) it is first published, broadcast or included in a cable programme service;
- or
- (b) in the case of a film or film sound-track, the film is first shown in public;
- but in determining whether a work has been released no account shall be taken of any unauthorised act.

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

**16.** (1) Copyright in a broadcast or cable programme will expire at the end of the period of fifty years from the end of the year in which the broadcast was made or the programme was included in a cable programme service.

(2) Copyright in a repeat broadcast or cable programme will expire at the same time as the copyright in the original broadcast or cable programme; and accordingly no copyright will arise in respect of a repeat broadcast or cable programme broadcast or included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.

(3) In this section, a repeat broadcast or cable programme means one which is a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service.

**Duration of copyright in typographical arrangements of published editions.**

**17.** Copyright in the typographical arrangement of a published edition will expire at the end of the period of twenty-five years from the end of the year in which the edition was first published.

**CHAPTER II**

**RIGHTS OF COPYRIGHT OWNER**

**The acts restricted by copyright**

**Acts restricted by copyright in work.**

**18.** (1) The owner of the copyright in a work has, in accordance with this Chapter, the exclusive right in Brunei Darussalam –

- (a) to copy the work;
- (b) to issue copies of the work to the public;

- (c) to perform, show or play the work in public;
- (d) to broadcast the work or include it in a cable programme service;
- (e) to make an adaptation of the work or do any of those acts in relation to an adaptation; and
- (f) to communicate the work to the public,

and all of those acts are referred to in this Order as the acts restricted by the copyright.

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

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

- (a) in relation to the work as a whole or any substantial part of it; and
- (b) either directly or indirectly,

and it is immaterial whether any intervening acts themselves infringe copyright.

(4) This Chapter has effect subject to Chapters III and VII.

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

**19.** (1) The copying of a work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies shall be construed in accordance with this section.

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

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

(4) Copying in relation to a film, television broadcast or cable programme includes the making of 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 the making of 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.

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

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

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

(a) the act of putting into circulation in Brunei Darussalam copies not previously put into circulation in Brunei Darussalam by or with the consent of the copyright owner; and

(b) the act of putting into circulation outside Brunei Darussalam copies not previously put into circulation in Brunei Darussalam or elsewhere, except that, in relation to sound recordings, films and computer programs, the restricted act of issuing copies to the public includes any rental of copies to the public.

*[S 92/2013]*

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

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

(b) any subsequent importation of copies previously put into circulation; or

(c) any rental of copies to the public,

except, so far as subsection (2)(a) applies, to putting into circulation in Brunei Darussalam copies previously put into circulation outside Brunei Darussalam.



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

[S 92/2013]

**Infringement by rental or lending of copies of work to public.** [S 92/2013]

**20A.** (1) The rental or lending of copies of the work to the public is an act restricted by the copyright in –

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

(2) In this Part, subject to subsections (3) to (6) –

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

[S 92/2013]

“rental” means making a copy of the work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage.

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

- (a) making available for the purpose of public performance, playing or showing in public or communication to the public;
- (b) making available for the purpose of exhibition in public; or
- (c) making available for on-the-spot reference use.

[S 92/2013]

(4) The expression “lending” does not include making available between establishments that are accessible to the public.

[S 92/2013]

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

[S 92/2013]

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

[S 92/2013]

### **Infringement by performance, etc., of work in public.**

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

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

(a) includes the delivery in the case of a lecture, address, speech or sermon;  
and

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

(3) The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film, 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 images or sounds were sent and, in the case of a performance, the performers, shall not be regarded as responsible for the infringement.

### **Infringement by broadcasting, etc.**

**22.** The broadcasting of a work or its inclusion in a cable programme service is an act restricted by the copyright in –

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

### **Infringement by making adaptation, etc.**

**23.** (1) The making of an adaptation of a work is an act restricted by the copyright in a literary, dramatic or musical work. For this purpose, an adaptation is made when it is recorded, in writing or otherwise.

(2) The doing of any of the acts specified in sections 19 to 22, or in subsection (1) of this section, in relation to an adaptation of a work, is an act restricted by the copyright in a literary, dramatic or musical work. For this purpose, it is immaterial whether the adaptation had been recorded, in writing or otherwise, at the time the act was done.

(3) In this Order, adaptation –

(a) in relation to a literary or dramatic work, means –

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

different computer language, code or notation, otherwise than incidentally in the course of running the program.

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

#### **Infringement by communicating to public.**

**24.** The communication to the public of a work is an act restricted by copyright. For this purpose, communication to the public is the transmission, by wire or without wire, of a work, including its being made available to the public in such a way that members of the public may access it from a place and at a time individually chosen by them.

#### **Reproduction and adaptation of computer programs.**

**25.** (1) Notwithstanding sections 19 and 23, the reproduction in a single copy, or the adaptation of a computer program, by the lawful owner of a copy of that computer program shall be permitted without the authorisation of the author or other owner of copyright, provided that the copy or adaptation is necessary –

(a) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained; or

(b) for archival purposes and in order to replace a lawfully owned copy of the computer program which has been lost, destroyed or damaged.

(2) No copy or adaptation of a computer program shall be used for any purpose other than those specified in subsection (1), and any such copy or adaptation shall be destroyed if the continued possession of the copy of the computer program ceases to be lawful.

#### **Back-up copy of computer program.** [S 92/2013]

**25A.** (1) Subject to subsection (2), the copyright in a literary work in the form of a computer program is not infringed by the making of a reproduction of the work or of a computer program being an adaptation of the work, if –

(a) the reproduction is made by, or on behalf of, the owner of the copy (in this section referred to as the original copy) from which the reproduction is made; and

(b) the reproduction is made for the purpose only of being used, by or on behalf of the owner of the original copy, *in lieu* of the original copy in the event that the original copy is lost, destroyed or rendered unusable.

(2) Subsection (1) does not apply to the making of a reproduction of a computer program or of an adaptation of a computer program –

(a) from an infringing copy of the computer program; or

(b) contrary to an express direction by or on behalf of the owner of the copyright in the computer program given to the owner of the original copy not later than the time when the owner of the original copy acquired the original copy.

[S 92/2013]

(3) For the purposes of this section –

(a) a reference to a copy of a computer program or of an adaptation of a computer program is a reference to any article in which the computer program or adaptation is reproduced in a material form; and

(b) a reference to an express direction, in relation to a copy of a computer program, or of an adaptation of a computer program, includes a reference to a clearly legible direction printed on the copy or on a package in which the copy is supplied.

[S 92/2013]

### **Secondary infringement of copyright**

#### **Secondary infringement: importing infringing copy.**

**26.** The copyright in a work is infringed by a person who, without the licence of the copyright owner, imports, 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.

#### **Secondary infringement: possessing, etc., infringing copy.**

**27.** The copyright in a work is infringed by a person who, without the licence of the copyright owner –

(a) possesses in the course of a business;

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

(c) in the course of a business, exhibits in public or distributes; or  
(d) distributes otherwise than in the course of a business to such an extent as to prejudicially affect 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.

**Secondary infringement: providing means for making infringing copies.**

**28.** (1) Copyright in a work is infringed by a person who, without the licence of the copyright owner –

- (a) makes;
- (b) imports;
- (c) possesses in the course of a business; or
- (d) sells, lets for hire, or offers or exposes for sale or hire,

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

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner transmits the work by means of a telecommunications system (otherwise than by 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 Brunei Darussalam or elsewhere.

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

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

(2) In subsection (1), “place of public entertainment” includes premises which are occupied mainly for any other purpose or purposes, but are from time to time made available for hire for the purpose of public entertainment.

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

**30.** 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 –

(a) the person who supplied the apparatus, or any substantial part of it, if when he supplied it –

(i) he knew or had reason to believe that it was likely to be so used as to infringe copyright; or

(ii) 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 so used as to infringe copyright;

(b) the occupier of premises who gave permission for the apparatus to be brought onto those premises, if when he gave permission he knew or had reason to believe that it was likely to be so used as to infringe copyright; and

(c) the person who supplied a copy of a sound recording or film used to infringe copyright, if when he supplied it he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright,

liable for the infringement.

**Infringing copies**

**Meaning of “infringing copy”.**

**31.** (1) In this Order, “infringing copy”, in relation to a copyright work, shall be construed in accordance with this section.

(2) An article is an infringing copy if –

(a) its making constituted an infringement of the copyright in the work in question; or

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

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

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

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

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

(4) In this Order, “infringing copy” includes a copy falling to be treated as an infringing copy under subsection (5) of section 36, subsection (3) of section 39, subsection (5) of section 40, paragraph (b) of subsection (2) of section 41, subsections (2) and (3) of section 60, subsection (2) of section 67, subsection (4) of section 71, or under an order made under section 152.

[S 92/2013]

### **CHAPTER III**

#### **ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS**

##### **Introductory**

###### **Introductory provisions.**

**32.** (1) This Chapter specifies acts which may be done in relation to copyright works notwithstanding the subsistence of copyright; it relates only to the question of infringement of copyright and does not affect any other right or obligation restricting the doing of any of the specified acts.



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

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

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

## **General**

### **Research and private study.**

**33.** (1) Fair dealing with a literary, dramatic, musical or artistic work for the purpose of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) Fair dealing with the typographical arrangement of a published edition for the purpose mentioned in subsection (1) does not infringe any copyright in the arrangement.

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

(a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 44 would not permit to be done under sections 42 or 43; 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.

### **Criticism, reviews and news reporting.**

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

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

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

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

**35.** (1) Copyright in a work is not infringed –

(a) by its incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme;

(b) by the issue to the public of copies, or by the playing, showing, broadcasting or inclusion in a cable programme service, of anything whose making was, under paragraph (a), not an infringement of the copyright.

(2) 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.

## **Education**

### **Things done for purpose of instruction or examination.**

**36.** (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction, or of preparation for instruction, provided the copying –

(a) is done by a person giving or receiving the instruction; and

(b) is not by means of a reprographic process.

(2) Copyright in a sound recording, film, broadcast or cable programme is not 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, provided the copying is done by a person giving or receiving the instruction.

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

(4) Subsection (3) does 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 section but is subsequently dealt with, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright shall be so treated for all subsequent purposes. In this subsection, “dealt with” means sold, let for hire, or offered or exposed for sale or hire.

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

**37.** (1) The inclusion of a short passage from a published literary or dramatic work in a collection which –

(a) is intended for use in an educational establishment and is so described in its title, and in any advertisement issued by or on behalf of the publisher; and

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

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

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

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

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

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

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

**Performing, etc., work in course of activities of educational establishment.**

**38.** (1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and students at an educational establishment and other persons directly connected with its activities –

(a) by a teacher or student in the course of the activities of the establishment;

or

(b) at the establishment by any person for the purpose of instruction,

is not a public performance for the purpose of infringement of copyright.

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

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

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

**39.** (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 its educational purposes

without thereby infringing the copyright in the broadcast or cable programme, or in any work included in it.

(2) This section does not apply if or to the extent that there is a licensing scheme certified for the purpose of this section under section 153 providing for the grant of licences.

(3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright shall be so treated for all subsequent purposes. In this subsection, “dealt with” means sold, let for hire, or offered or exposed for sale or hire.

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

**40.** (1) Reprographic copies of passages from a published literary, dramatic or musical work may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purpose 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 under this section 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 is not authorised by this section if, or to the extent that, licences are available authorising 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 authorising the reprographic copying for the purpose of instruction of passages from published literary, dramatic or musical works are of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or not) to less than that which would be permitted under this section.

(5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright shall be so treated for all subsequent purposes. In this subsection, “dealt with” means sold, let for hire, offered or exposed for sale or hire.

### **Libraries and archives**

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

**41.** (1) In sections 42 to 47, references to a prescribed library or archive are to a library or archive of a prescribed description.

(2) 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 is liable for infringement of copyright as if he had made the copy himself; and

(b) the copy shall be treated as an infringing copy.

(3) References in this section, and in sections 42 to 47, to a librarian or archivist include a person acting on his behalf.

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

**42.** (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 it or in the typographical arrangement.

(2) The prescribed conditions shall include provision –

(a) that copies are supplied only to persons satisfying the librarian that they require them for the purpose 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 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 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.

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

**43.** (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 part 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 it or in the typographical arrangement.

(2) The prescribed conditions shall include provision –

- (a) that copies are supplied only to persons satisfying the librarian that they require them for the purpose 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.

**Restriction on production of multiple copies of same material.**

**44.** (1) Regulations for the purposes of sections 42 and 43 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 regulations 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 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.

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

**45.** (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, as the case may be, in the work, in any illustrations accompanying it or in the typographical arrangement.

(2) Paragraph (b) of subsection (1) does not apply if at the time the copy was made the librarian making it knew, or could by reasonable inquiry have ascertained, the name and address of a person entitled to authorise the making of the copy.

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

**46.** (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 it 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 to fulfil that purpose.



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

47. (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 section does not apply if –

(a) the work had been published before the document was deposited in the library or archive; or

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

and at the time the copy was made the librarian or archivist making it was, or ought to have been, aware of that fact.

(3) The prescribed conditions shall include provision –

(a) that copies are supplied only to persons satisfying the librarian or archivist that they require them for the purpose 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 not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

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

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

## **Public administration**

### **Legislative Council and judicial proceedings.**

**49.** (1) Copyright is not infringed by anything done for the purpose of proceedings of the Legislative Council or of judicial proceedings.

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

### **Royal Commissions and statutory inquiries.**

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

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

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

(4) In this section, “statutory inquiry” means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under any written law.

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

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

(2) Where material is open to public inspection under a statutory requirement, copyright is not 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 was imposed.

(3) Where material which is open to public inspection under a statutory requirement, or which is on a statutory register, contains information about matters of general scientific, technical, commercial or economic interest, copyright is not 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 disseminating that information.

(4) The Attorney General may by order provide that subsections (1), (2) and (3) shall, in such cases as may be prescribed, apply only to copies marked in such manner as may be so prescribed.

(5) The Attorney General may by order provide that subsections (1), (2) and (3) shall, to such extent and with such modifications as may be prescribed, apply –

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

(i) a prescribed international organisation; or

(ii) a prescribed person who has functions in Brunei Darussalam under an international agreement to which Brunei Darussalam is a party; or

(b) to a register maintained by a prescribed international organisation, as they apply in relation to material open to public inspection under a statutory requirement or to a statutory register.

(6) In this section –

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

“statutory register” means a register maintained under a statutory requirement;

“statutory requirement” means a requirement imposed by or under any written law.

**Material communicated to Government in course of public business.**

**52.** (1) This section applies where a literary, dramatic, musical or artistic work has in the course of public business (which expression in this subsection includes any activity carried on by the Government) been communicated to the Government 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 Government.

(2) The Government may, for the purpose for which the work was communicated to it, 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 Government may not copy a work, or issue copies of a work to the public, by virtue of this section if the work has previously been published otherwise than by virtue of this section.

(4) This section has effect subject to any agreement to the contrary between the Government and the copyright owner.

**Public archives and records.**

**53.** Material which is comprised in public archives or public records within the meaning of the Brunei National Archives Act which is available to the public under that Act may be copied, and a copy may be supplied to any person, by or with the authority of the Director appointed under subsection (1) of section 4 of that Act, without infringement of copyright.

**Acts done under statutory authority.**

54. (1) Where the doing of a particular act is specifically authorised by any written law, whenever it commenced, then, unless that written law provides otherwise, the doing of that act does not infringe copyright.

(2) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under any written law.

**Designs**

**Design documents and models.**

55. (1) It is not an infringement of any copyright –

(a) 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;

(b) to issue to the public, or include in a film, broadcast or cable programme service, anything the making of which was, under subsection (1), not an infringement of that copyright.

(2) In this section –

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

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

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

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

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

(b) marketing such articles, in Brunei Darussalam or elsewhere.

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

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

(4) The Attorney General 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 purpose of this section as made by an industrial process;

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

(5) In this section –

(a) references to articles do not include films;

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

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

**57.** (1) The copyright in an artistic work is not infringed by anything done –

(a) under an assignment or licence made or granted by the person registered under any law relating to the registration of designs 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 such registration or for rectifying the relevant entry in any register of designs (by whatsoever name so called) kept or maintained under any such law;

and this is so notwithstanding that the person registered as any such proprietor was not the proprietor of the design for the purpose of that law.

(2) In subsection (1), a corresponding design, in relation to an artistic work, means a design within the meaning of any law relating to the registration of designs which if applied to an article would produce something which would be treated for the purpose of this Part as a copy of the artistic work.

## **Typefaces**

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

**58.** (1) It is not an infringement of copyright in an artistic work consisting of the design of a typeface –

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

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

(c) to do anything in relation to material produced by such use, notwithstanding that an article is used which is an infringing copy of the work.

(2) Notwithstanding subsection (1) of this section, sections 28, 101 and 102, subsection (2) of section 204, and section 209 apply to persons making, importing or dealing with articles specifically designed or adapted for producing material in a particular typeface, or possessing such articles for the purpose of dealing with them, as if the production of material as mentioned in subsection (1) did infringe copyright in the artistic work consisting of the design of the typeface. In this subsection, “dealing with” means selling, letting for hire, offering or exposing for sale or hire, exhibiting in public or distributing.

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

**59.** (1) This section applies to the copyright in an artistic work consisting of the design of a typeface where articles specifically designed or adapted for producing material in that typeface have been marketed by or with the licence of the copyright owner. In this section, “marketed” means sold, let for hire, or offered or exposed for sale or hire, whether in Brunei Darussalam or elsewhere.

(2) After the end of the period of twenty-five years from the end of the year in which such articles were first 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.

### **Works in electronic form**

#### **Transfers of copies of works in electronic form.**

**60.** (1) This section applies where a copy of a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any 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 by a transferee without infringement of copyright; 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) Where the original purchased copy is no longer usable and what is transferred is a further copy used in its place, anything which the purchaser was allowed to do may also be done by a transferee without infringement of copyright; 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.

(4) On a subsequent transfer this section applies, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.

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

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

**61.** (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, or under arrangements made at a time when –

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

(b) it was reasonable to assume –

(i) that copyright had expired; or

(ii) that the author had died fifty years or more before the beginning of the year in which the act was done or the arrangements were made.

(2) Sub-paragraph (ii) of paragraph (b) of subsection (1) does not apply to –

(a) a work in which Government copyright subsists; or

(b) a work in which copyright originally vested in an international organisation under section 172 and in respect of which an order under that section specifies a copyright period longer than fifty years.

- (3) In relation to a work of joint authorship –
- (a) the reference in subsection (1) to its being possible to ascertain the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors; and
  - (b) the reference in sub-paragraph (ii) of paragraph (b) of subsection (1) to the author having died shall be construed as a reference to all the authors having died.

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

**62.** (1) Where a record of spoken words is made, in writing or otherwise, for the purpose –

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

it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it (or to copy the record, or any such material, and use the copy) for that purpose, if the conditions mentioned in subsection (2) have been complied with.

- (2) The conditions are that –
- (a) the record was a direct record of the spoken words and was 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 was not of a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and
  - (d) the use was by or with the authority of a person who was lawfully in possession of the record.

### **Public reading or recitation.**

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

(2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service, of a reading or recitation which under subsection (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 subsection.

### **Abstracts of scientific or technical articles.**

**64.** (1) Where an article on a scientific or technical subject is published in a periodical accompanied by an abstract indicating the contents of the article, it is not an infringement of copyright in the abstract, or in the article, to copy the abstract or issue copies of it to the public.

(2) This section does not apply if or to the extent that there is a licensing scheme certified for the purposes of this section under section 153 providing for the grant of licences.

### **Recordings of folksongs.**

**65.** (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 mentioned in subsection (2) have been complied with.

(2) The conditions are that –

(a) the words were unpublished and of unknown authorship at the time the recording was made;

(b) the making of the recording did not infringe any other copyright; and

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

(3) Copies of a sound recording made in reliance on subsection (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 or a person acting on his behalf without infringing copyright in the recording or the works included in it.

(4) The prescribed conditions shall include provision that –

(a) copies are only supplied to a person satisfying the archivist or a person acting on his behalf that he requires them for the purpose of research or private study and will not use them for any other purpose; and

(b) no person is furnished with more than one copy of the same recording.

(5) In this section, “designated body” means a body designated for the purpose of this section by an order of the Attorney General, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

#### **Representation of certain artistic works on public display.**

**66.** (1) This section applies to –

(a) buildings; and

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

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

(a) the making of a graphic work representing it;

(b) the making of a photograph or film of it;

(c) the broadcasting of it, or the inclusion in a cable programme service of 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 whose making was, under this subsection, not an infringement of the copyright.

### **Advertisement of sale of artistic work.**

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

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with for any other purpose, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright shall be so treated for all subsequent purposes. In this subsection, “dealt with” means sold, let for hire, offered or exposed for sale or hire, exhibited in public or distributed.

### **Making of subsequent work by same artist.**

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

### **Reconstruction of buildings.**

**69.** Anything done for the purpose of reconstructing a building does not infringe any copyright –

- (a) in the building; or
- (b) in any drawings or plans in accordance with which the building was, by or with the licence of the copyright owner, constructed.

### **Miscellaneous: sound recordings, films and computer programs**

#### **Playing of sound recordings for purpose of club, society, etc.**

**70.** (1) It is not 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 similar organisation if the conditions mentioned in subsection (2) have been complied with.

(2) The conditions are that –

(a) the organisation was not established or conducted for profit and that its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and

(b) the proceeds of any charge for admission to the place where the recording was heard were applied solely for the purposes of the organisation.

### **Miscellaneous: broadcasts and cable programmes**

#### **Incidental recording for purpose of broadcast or cable programme.**

**71.** (1) This section applies where under a licence or assignment of copyright a person is authorised 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) That person shall by virtue of this section be treated as licensed by the owner of the copyright in the work to do or authorise for the purpose of the broadcast or cable programme –

- (a) in the case of a literary, dramatic or musical work, or an adaptation of such a work, the making of a sound recording or film of the work or adaptation;
- (b) in the case of an artistic work, the taking of a photograph or the making a film of the work;
- (c) in the case of a sound recording or film, the making of a copy of it.

(3) That licence is subject to the condition that the sound recording, film, photograph or copy –

- (a) shall not be used for any other purpose; and
- (b) shall be destroyed within twenty-eight days of being first used for broadcasting the work or, as the case may be, including it in the cable programme service.

(4) A sound recording, film, photograph or copy made in accordance with this section shall be treated as an infringing copy –

(a) for the purpose of any use in breach of the condition mentioned in paragraph (a) of subsection (3); and

(b) for all purpose after that condition, or the condition mentioned in paragraph of subsection (3), has been broken.

### **Recording for purpose of supervision, etc., of programmes.**

72. Copyright is not infringed by the making or use by the Government, for the purpose of maintaining supervision and control over programmes broadcast by it, of recordings of those programmes.

### **Recording for purpose of time-shifting.**

73. 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 listened to or viewed at a more convenient time does not infringe any copyright in the broadcast or cable programme or in any work included in it.

### **Photographs of television broadcasts or cable programmes.**

74. 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 such a photograph, does not infringe any copyright in the broadcast or cable programme or in any film included in it.

### **Free public playing or showing of broadcast or cable programme.**

75. (1) The playing or showing in public of a broadcast or cable programme to an audience that has not paid for admission to the place where the broadcast or programme is to be heard or seen does not infringe any copyright in –

(a) the broadcast or cable programme; or

(b) 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 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 that place;

(b) persons admitted as members of a club, society or other similar organisation where the payment is only for membership thereof and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to its main purposes.

(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 seen or heard in public by the reception of the broadcast or programme shall be taken into account in assessing the damages for that infringement.

### **Reception and re-transmission of broadcast in cable programme service.**

**76.** (1) This section applies where a broadcast made from Brunei Darussalam is, by reception and immediate re-transmission, included in a cable programme service.

(2) The copyright in the broadcast is not infringed if and to the extent that it was made for reception in the area in which the cable programme service is provided and was 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 it was 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.

**Provision of sub-titled copies of broadcast or cable programme.**

**77.** (1) A designated body may, for the purpose of providing persons who are physically or mentally handicapped in any way, 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. In this section, “designated body” means a body designated for the purpose of this section by order of the Attorney General, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

(2) This section does not apply if, or to the extent that, there is a licensing scheme certified for the purpose of this section under section 153 providing for the grant of licences.

**Recording for archival purposes.**

**78.** 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. In this section, “designated” means designated for the purpose of this section by order of the Attorney General, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

**Adaptations**

**Adaptations.**

**79.** An act which under this Chapter may be done without infringing copyright in a literary, dramatic or musical work does not, where that work is an adaptation, infringe any copyright in the work from which the adaptation was made.

## CHAPTER IV

### MORAL RIGHTS

#### Right to be identified as author or director

##### Right to be identified as author or director.

**80.** (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right to be identified as the author or director of the work in the circumstances mentioned in this section; but the right is not infringed unless it has been asserted in accordance with section 81.

(2) The author of a literary work, other than words intended to be sung or spoken with music, or a dramatic work has the right to be identified whenever –

(a) the work is published commercially, performed in public, 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 includes the right to be identified, whenever any of those events occur in relation to an adaptation of the work, as the author of the work from which the adaptation was made.

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

(a) the work is published commercially;

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

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

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

- (4) The author of an artistic work has the right to be identified whenever –
- (a) the work is published commercially or exhibited in public, or a visual image of it is 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 such a film are issued to the public; or
  - (c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it, or of a photograph of it, are issued to the public.

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

(6) The director of a film has the right to be identified whenever the film is shown in public, 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 section is –
- (a) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of the person acquiring a copy;
  - (b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building; and
  - (c) in any other case, to be identified in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, exhibition, showing, broadcast or cable programme’

and the identification must in each case be clear and reasonably prominent.

(8) If the author or director in asserting his right to be identified specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.

(9) This section has effect subject to section 82.

**Requirement that right be asserted.**

**81.** (1) A person does not infringe the right conferred by section 80 by doing any of the acts mentioned in that section, unless the right has been asserted in accordance with this section 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) in writing signed by the author or director.

(3) The right may be asserted in relation to the public exhibition of an artistic work –

(a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached; or

(b) by including in a licence by which the author or other first owner of copyright authorises the making of copies of the work, a statement signed by or on behalf of the person granting the licence that the author asserts his right to be identified in the event of the public exhibition of a copy made under the licence.

- (4) The persons bound by an assertion under subsections (2) or (3) are –
- (a) in the case of an assertion under paragraph (a) of subsection (2), 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 (b) of subsection (2), anyone to whose notice the assertion has been brought;
  - (c) in the case of an assertion under paragraph (a) of subsection (3), anyone into whose hands that original or copy has come, whether or not the identification was still present or visible;
  - (d) in the case of an assertion under paragraph (b) of subsection (3), the licensee and anyone into whose hands a copy made under the licence has come, 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 that right.

### **Exceptions to rights.**

- 82.** (1) The rights conferred by section 80 are subject to this section.
- (2) Such right does 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 under subsection (2) of section 13; or
  - (b) in the director's employer under paragraph (a) of subsection (2) of section 11.
- (3) Such rights are not infringed by an act which under section 34, so far as it relates to the reporting of current events by means of a sound recording, film, broadcast or cable programme, section 35, subsection (3) of section 36, section 49, subsections (1) and (2) of section 50, or sections 55, 56 and 61 would not infringe copyright in the work.

(4) Such rights do not apply to any work made for the purpose of reporting current events.

(5) Such rights does not apply 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 purpose of such publication or made available with the consent of the author for the purpose of such publication.

(6) Such rights do not apply to –

(a) a work in which Government copyright or Legislative Council copyright subsists; or

(b) a work in which copyright originally vested in an international organisation under section 172,

unless the author or director has previously been identified as such in or on published copies of the work.

### **Right to object to derogatory treatment of work**

#### **Right to object to derogatory treatment of work.**

**83.** (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right in the circumstances mentioned in this section not to have his work subjected to derogatory treatment.

(2) In this section –

(a) the treatment of a work means any addition to, deletion from, 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;

(b) the treatment of a work is derogatory if it amounts to distortion, mutilation or any other modification of the work or is otherwise prejudicial to the honour or reputation of the author or director.

(3) In the case of a literary, dramatic or musical work, the right is infringed by a person who –

(a) publishes commercially, performs in public, 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 is 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 such a film; or

(c) in the case of –

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

(ii) a sculpture; or

(iii) a work of artistic craftsmanship,

issues to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.

(5) Subsection (4) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment he has the right to require the identification to be removed.

(6) In the case of a film, the right is infringed by a person who –

(a) shows in public, 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, or who, along with the film, plays in public, broadcasts or includes in a cable programme service, or issues to the public copies of, a derogatory treatment of the film sound-track.

(7) The right conferred by this section extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.

(8) This section has effect subject to sections 84 and 85.

### **Exceptions to right.**

**84.** (1) The right conferred by section 83 is subject to this section.

(2) Such right does not apply to any work made for the purpose of reporting current events.

(3) Such right does not apply to –

(a) the publication in –

(i) a newspaper, magazine or similar periodical; or

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

of a literary, dramatic, musical or artistic work made for the purpose of such publication or made available with the consent of the author for the purpose of such publication; or

(b) any subsequent exploitation elsewhere of such a work without any modification of the published version.

(4) Such right is not infringed by an act which under section 61 would not infringe copyright.

(5) Such right is not infringed by anything done for the purpose of –

(a) avoiding the commission of an offence;

(b) complying with a duty imposed by or under any law; or



(c) in the case of the Government, avoiding the inclusion in a programme broadcast by it of anything which offends against good taste or decency, which is likely to encourage or incite to crime or lead to disorder, or which is likely to be offensive to public feeling,

provided, where the author or director was identified at the time of the act or had previously been identified in or on published copies of the work, that there was a sufficient disclaimer.

#### **Qualification of right in certain cases.**

**85.** (1) This section applies to –

(a) a work in which copyright originally vested in the author’s employer under subsection (2) of section 13, or in the director’s employer under paragraph (a) of subsection (2) of section 11;

(b) a work in which Government copyright or Legislative Council copyright subsists; and

(c) a work in which copyright originally vested in an international organisation under section 172.

(2) The right conferred by section 83 does not apply to anything done in relation to such a work by or with the authority of the copyright owner unless the author or director –

(a) was identified at the time of the act; or

(b) had previously been identified in or on published copies of the work,

and where in such a case the right does apply, it is not infringed if there has been a sufficient disclaimer.

#### **Infringement of right by possessing, etc., infringing article.**

**86.** The right conferred by section 83 is infringed by a person who –

(a) possesses in the course of a business;

(b) sells, 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 prejudice 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. In this section, an infringing article means a work or a copy of a work which –

- (i) has been subjected to derogatory treatment within the meaning of section 83; and
- (ii) has been or is likely to be the subject of any of the acts mentioned in that section in circumstances infringing that right.

### **False attribution of work**

#### **False attribution of work.**

- 87.** (1) A person has the right in the circumstances mentioned in this section –
- (a) not to have a literary, dramatic, musical or artistic work falsely attributed to him as author; and
  - (b) not to have a film falsely attributed to him as director.

In this section, an attribution, in relation to such a work, means a statement, whether express or implied, as to who is the author or director.

- (2) Such right is infringed by a person who –
  - (a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution; or
  - (b) exhibits in public an artistic work, or a copy of an artistic work, in or on which there is a false attribution.
- (3) Such right is infringed by a person who –
  - (a) 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
  - (b) 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) Such right is infringed by the issue to the public, or by the public display, of material containing a false attribution in connection with any of the acts mentioned in subsections (2) and (3).

(5) Such right is infringed by a person who in the course of a business –

(a) possesses or deals with a copy of a work of any of the descriptions mentioned in subsection (1) in or on which there is a false attribution; or

(b) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it,

knowing or having reason to believe that there is such an attribution and that it is false.

(6) In the case of an artistic work, such right is infringed by a person who in the course of a business –

(a) deals with a work that has been altered after the author parted with possession of it as being the unaltered work of the author; or

(b) deals with a copy of such a work as being a copy of the unaltered work of the author,

knowing or having reason to believe that this was not the case.

(7) In this section, “deals” means sells, lets for hire, offers or exposes for sale or hire, exhibits in public, or distributes.

(8) This section applies where, contrary to the fact –

(a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person; or

(b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,

as it applies where the work is falsely attributed to a person as author.

## **Right to privacy of certain photographs and films**

### **Right to privacy of certain photographs and films.**

**88.** (1) A person who for private and domestic use commissions the taking of a photograph or the making of a film has, where copyright subsists in the resulting work, the right not to have –

- (a) copies of the work issued to the public;
- (b) the work exhibited or shown in public; and
- (c) the work broadcast or included in a cable programme service,

and, subject to subsection (2), a person who does or authorises the doing of any of those acts infringes that right.

(2) Such right is not infringed by an act which under sections 35, 49, 50, 54 and 61 would not infringe copyright in the work.

## **Supplementary**

### **Duration of rights.**

**89.** (1) The rights conferred by sections 80, 83 and 88 continue to subsist so long as copyright subsists in the work.

(2) The right conferred on a person by section 87 continues to subsist for twenty years after his death.

### **Consent and waiver of rights.**

**90.** (1) It is not an infringement of any of the rights conferred by this Chapter to do any act to which the person entitled to the right has consented.

(2) Any of those rights may be waived in writing signed by the person giving up the right.

- (3) A waiver –
- (a) may relate to a specific work, works of a specified description or 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 to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

(4) Nothing in this Chapter shall be construed as excluding the operation of any law relating to contract or estoppel in relation to an informal waiver or other transaction in relation to any of the rights mentioned in subsection (1).

#### **Application of provisions to joint works.**

**91.** (1) The right conferred by section 80 is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author and must be asserted in accordance with section 81 by each joint author in relation to himself.

(2) The right conferred by section 83 is, in the case of a work of joint authorship, a right of each joint author, and his right is satisfied if he consents to the treatment in question.

(3) A waiver under section 90 of those rights, or of either of them, by one joint author does not affect the rights of the other joint authors.

(4) The right conferred by section 87 is infringed, in the circumstances mentioned in that section –

- (a) by any false statement as to the authorship of a work of joint authorship;
- and
- (b) by the false attribution of joint authorship in relation to a work of sole authorship,

and such a false attribution infringes the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed.

(5) Subsections (1) to (4) apply, with any necessary modifications, in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship. A film is jointly directed if it is made by the collaboration of two or more directors, and the contribution of each director is not distinct from that of the other director or directors.

(6) The right conferred by section 88 is, in the case of a work made under a joint commission, a right of each person who commissioned the making of the work, so that –

- (a) the right of each is satisfied if he consents to the act in question; and
- (b) a waiver under section 90 by one of them does not affect the rights of the others.

#### **Application of provisions to parts of works.**

**92.** (1) The rights conferred by sections 80 and 88 apply to the whole or any substantial part of a work.

(2) The rights conferred by sections 83 and 87 apply to the whole or any part of a work.

## **CHAPTER V**

### **DEALINGS WITH RIGHTS IN COPYRIGHT WORKS**

#### **Copyright**

##### **Assignments and licences.**

**93.** (1) Copyright is transmissible by assignment, will and operation of law, as movable property.

(2) An assignment of copyright may be 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

(b) to part, but not to the whole, of the period for which the copyright is to subsist.

(3) An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted by a copyright owner is binding on every successor in title to his interest in the copyright, except a purchaser in good faith for valuable consideration and without notice, whether actual or constructive, of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

#### **Prospective ownership of copyright.**

**94.** (1) Where by an agreement made in relation to future copyright, and entered into by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright, whether wholly or partly, to another person, then if, on the copyright coming into existence, the assignee or any person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title under this subsection.

(2) In this Part –

“future copyright” means copyright which will or may come into existence in respect of a future work or class of works or on the occurrence of a future event;

“prospective owner” shall be construed accordingly, and includes a person who is prospectively entitled to copyright under such an agreement as is mentioned in subsection (1).

(3) A licence granted by a prospective owner of copyright is binding on every successor in title to his interest or prospective interest in the copyright, except a purchaser in good faith for valuable consideration and without notice, whether actual or constructive, of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

**Exclusive licences.**

**95.** (1) In this Order, “exclusive licence” means a licence, whether general or limited, in writing signed by or on behalf of the copyright owner authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise in the manner authorised by the licence any right which would otherwise be exercisable exclusively by the copyright owner.

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

**Copyright to pass under will with unpublished work.**

**96.** Where under a bequest in a will a person is entitled, whether 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 will, 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.



## Moral rights

### Moral rights not assignable.

97. The rights conferred by Chapter IV are not assignable.

### Transmission of moral rights on death.

98. (1) On the death of a person entitled to a right conferred by sections 80, 83 or 88 –

- (a) the right passes to such person as he may by will specifically direct;
- (b) if there is no such direction but the copyright in the work forms part of his estate, the right passes to the person to whom the copyright passes; and
- (c) if or to the extent that the right does not pass under paragraphs (a) or (b), it is exercisable by his personal representative.

(2) Where copyright forming part of a person's estate passes in part to one person and in part to another, including cases where a bequest is limited so as to apply –

- (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do or authorise; or
- (b) to part, but not the whole, of the period for which the copyright is to subsist,

any right which passes with the copyright under subsection (1) is correspondingly divided.

(3) Where under paragraphs (a) or (b) of subsection (1) a right becomes exercisable by more than one person –

- (a) it may, in the case of the right conferred by section 80, be asserted by any of them;
- (b) it is, in the case of the right conferred by sections 83 or 88, a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and
- (c) any waiver of the right in accordance with section 90 by one of them does not affect the rights of the others.

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

(5) Any infringement after a person's death of the right conferred by section 87 is actionable by his personal representative.

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

## **CHAPTER VI**

### **REMEDIES FOR INFRINGEMENT**

#### **Rights and remedies of copyright owner**

##### **Infringement actionable by copyright owner.**

**99.** (1) An infringement of copyright is actionable by the copyright owner.

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

(3) This section has effect subject to the following provisions of this Chapter.

##### **Provisions as to damages in infringement actions.**

**100.** (1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

(2) The court may in an action for infringement of copyright, having regard to all the circumstances including –

(a) The flagrancy of the infringement; and

(b) Any benefit accruing to the defendant by reason of the infringement, award such additional damages as the justice of the case may require.

### **Order for delivery up.**

**101.** (1) Where a person –

(a) in the course of a business, has in his possession, custody or control an infringing copy of a work; or

(b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it has been or is to be used to make infringing copies,

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

(2) An application shall not be made after the end of the period specified in section 211; and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 212.

(3) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall, if an order under section 212 is not made, retain it pending the making of an order, or the decision not to make an order, under this section.

(4) Nothing in this section affects any other power of the court.

### **Right to seize infringing copies.**

**102.** (1) An infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under section 101, may be seized and detained by him or a person authorised by him. The right to seize and detain is exercisable subject to the conditions mentioned in this section and is subject to any decision of the court under section 212.

(2) Before anything is seized under this section, notice of the time and place of the proposed seizure must be given to a local police station.

(3) A person may for the purpose of exercising the right conferred by this section enter any place to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his, and may not use any force.

(4) At the time when anything is seized under this section, there shall be left at the place where it was seized a notice containing particulars of the person by whom or on whose authority the seizure was made and the grounds on which it was made.

### **Rights and remedies of exclusive licensee**

#### **Rights and remedies of exclusive licensee.**

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

(2) Such rights and remedies are concurrent with those of the copyright owner; and references in this Part to the copyright owner which relate to infringement shall be construed accordingly.

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

#### **Exercise of concurrent rights.**

**104.** (1) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates, whether wholly or partly, to an infringement in respect of which they have concurrent rights of action, the copyright owner or, as the case may be, the

exclusive licensee may not, without the leave of the court, proceed with the action unless the other of them is either joined as a plaintiff or added as a defendant.

(2) A copyright owner or exclusive licensee who is added as a defendant is not liable for any costs in the action unless he has taken part in the proceedings.

(3) Subsections (1) and (2) do not affect the granting of interlocutory relief on an application by a copyright owner or exclusive licensee alone.

(4) Where an action for infringement of copyright is brought which relates, whether 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 it considers just, subject to any agreement to the contrary.

This subsection applies whether or not the copyright owner and the exclusive licensee are both parties to the action; and if they are not both parties the court may give such directions as it thinks fit as to the extent to which the party to the proceedings is to hold the proceeds of any pecuniary remedy on behalf of the other.

(5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 101 or exercising the right conferred by section 102; and the court may on the application of the licensee make such order under section 101 or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right conferred by section 102, as it thinks fit having regard to the terms of the licence.

## **Remedies for infringement of moral rights**

### **Remedies for infringement of moral rights.**

**105.** (1) In addition to the other rights and remedies available otherwise than under this Part, an infringement of a right conferred by Chapter IV is actionable as a breach of statutory duty owed to the person entitled to that right.

(2) In an action for infringement of the right conferred by section 83, the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, disassociating the author or director from the treatment of the work.

## **Presumptions**

### **Presumptions relevant to literary, dramatic, musical and artistic works.**

**106.** (1) This section applies in proceedings brought under this Chapter with respect to a literary, dramatic, musical or artistic work.

(2) Where a name purporting to be that of the author appears on copies of the work as published or on the work when it was made, the person whose name so appears 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 subsection (2) of section 13, or sections 167, 169 or 172.

(3) In the case of a work alleged to be a work of joint authorship, subsection (2) applies in relation to each person alleged to be one of the authors.

(4) Where no name purporting to be that of the author appears as mentioned in subsection (2), but –

- (a) the work qualified for copyright protection under section 164; and
- (b) a name purporting to be that of the publisher appears on copies of the work as first published,

the person whose name so appears 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 his identity cannot be ascertained by reasonable inquiry, it shall be presumed, until the contrary is proved –

- (a) that the work is an original work; and
- (b) that the plaintiff's allegations as to the first publication of the work and as to the country of first publication are correct.

**Presumptions relevant to sound recordings, films and computer programs.**

**107.** (1) In proceedings brought under this Chapter with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating –

- (a) that a named person was the owner of copyright in the recording at the date of issue of the copies; or
- (b) that the recording was first published in a certain year or in a named country,

that label or other mark shall be admissible as evidence of those facts and shall be presumed to be correct until the contrary is proved.

(2) In proceedings brought under this Chapter with respect to a film, where copies of the film as issued to the public bear a statement –

- (a) that a named person was the author or director of the film;
- (b) that a named person was the owner of copyright in the film at the date of issue of the copies; or

(c) that the film was first published in a certain year or in a named country, that statement shall be admissible as evidence of those facts and shall be presumed to be correct until the contrary is proved.

(3) In proceedings brought under this Chapter with respect to a computer program, where copies of that 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 named country or that copies of it were first issued to the public in electronic form in a certain year,

that statement shall be admissible as evidence of those facts and shall be presumed to be correct until the contrary is proved.

(4) Subsections (1), (2) and (3) apply, whether or not the infringement was alleged to have occurred before or after the date on which the copies were issued to the public.

(5) In proceedings brought under this Chapter 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 author or director of the film; or
- (b) that a named person was the owner of copyright in the film immediately after it was made,

that statement shall be admissible as evidence of those facts and shall be presumed to be correct until the contrary is proved. This presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast or included in the cable programme service.

**Presumptions relevant to works subject to Government copyright.**

**108.** In proceedings brought under this Chapter with respect to a literary, dramatic or musical work in which Government 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 that fact and shall be presumed to be correct until the contrary is proved.



## Border Enforcement Measures

### **Infringing copies may be treated as prohibited good.**

**109.** (1) The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to the Controller of Customs –

- (a) claiming that he is the owner of the copyright in the work; and
- (b) requesting the Controller of Customs, for the period specified in the notice, to treat as prohibited goods printed copies of the work which are infringing copies for the purposes of this Order that are or at any time come under customs control.

(2) The period specified in a notice under subsection (1) shall not exceed five years and shall not extend beyond the period for which copyright subsists.

(3) The owner of the copyright in a sound recording or film may give notice in writing to the Controller of Customs –

- (a) claiming that he is the owner of the copyright in the work;
- (b) claiming that infringing copies of the work are expected to arrive in Brunei Darussalam at the time and place specified in the notice; and
- (c) requesting the Controller of Customs to treat as prohibited goods the infringing copies that come under customs control.

(3A) The period specified in a notice under subsection (1) shall not exceed 5 years and shall not extend beyond the period for which copyright subsists.

*[S 92/2013]*

(4) When a notice has been given under this section, the goods to which it relates, unless they have been imported for private and domestic use, shall become prohibited goods for the purposes of the Customs Order, 2006 (S 39/2006) and shall be deemed to have been included in an order made under section 31(1) of that Order, and the provisions of that Order relating to the importation of prohibited goods shall apply accordingly, but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.

*[S 92/2013]*

(5) A notice given under this section remains in force for the period specified in the notice unless –

- (a) it is revoked by the claimant in writing; or
- (b) the court orders, in proceedings under section 114, that it be discharged.

**Determination whether goods are infringing copies.**

**110.** (1) Where –

- (a) a notice that has been given under section 109(1) or (3) is in force; and  
*[S 92/2013]*
- (b) an officer of customs forms the opinion that any goods that have been imported and are under customs control may be infringing copies,

he may conduct such investigation as he considers necessary to establish whether or not the goods appear to be infringing copies.

(2) Where an officer of customs conducts an investigation, he may, subject to section 111, require –

- (a) the claimant; and
- (b) any other person appearing to him to have an interest in the goods,

to supply such information as he may specify within ten days of being required to do so.

(3) Whether or not the officer of customs conducts an investigation, he shall make a determination whether or not the goods appear to be infringing copies.

(4) Nothing in this section applies to any goods that have been imported for private and domestic use.

**Limitations on requirement to supply information.**

**111.** (1) An officer of customs shall not require any person to supply any information under subsection (2) of section 110 unless he believes that the information is necessary for the purpose of the investigation.

(2) Every person who is required to supply information shall have the same privilege in relation to the giving of the information as a witness has in any court.

(3) Where any person refuses or fails to supply information, the officer of customs may, subject to subsection (2) of this section, take that refusal or failure into account in making a determination under subsection (3) of section 110.

**Notice of determination.**

**112.** (1) An officer of customs who has made a determination under subsection (3) of section 110 shall cause written notice of that determination to be served on –

- (a) of claimant; and
- (b) any other person appearing to him to have an interest in the goods.

(2) Every notice required to be served under subsection (1) may be served by –

- (a) personal delivery; or
- (b) posting it to the last-known addresses of the claimant and such other person.

(3) The detention of any goods under section 113 is not rendered illegal by a failure to serve notice under subsection (1) of this section.

**Detention of infringing goods.**

**113.** (1) Where an officer of customs has formed an opinion that any goods that have been imported and are under customs control may be goods to which a notice given under section 109(1) or (3) relates, those goods shall forthwith be detained by him until –

*[S 92/2013]*

- (a) the Controller of Customs has been served with an order made in proceedings under subsection (1) of section 114 that the notice be discharged;
- (b) the Controller of Customs has been served with an order made in proceedings under subsection (2) of section 114 that the goods be released;
- (c) any proceedings under subsection (3) of section 114 (including any appeal) have been determined by a decision that the goods are not infringing copies;
- (d) any proceedings under subsection (3) of section 114 (including any appeal) have been abandoned; or

(e) ten days have elapsed since notice was served under section 112 and the Controller of Customs has not been served with notice of proceedings brought under subsection (3) of section 114 by any person other than the importer or consignee, whereupon the goods shall, subject to subsection (5) of this section, be released to the person entitled to them.

(2) An officer of customs may refuse to detain goods under this section unless –

(a) the claimant has deposited with the Controller of Customs a sum of money that, in the opinion of the Controller of Customs, is sufficient to reimburse the Government for any liability or expense it is likely to incur as a result of the detention of the copies; or

*[S 92/2013]*

(b) the claimant has given security, to the satisfaction of the Controller of Customs, for the reimbursement of the Government for any such liability or expense.

*[S 92/2013]*

(3) If the reasonable expenses incurred by the Controller of Customs in relation to any action taken by him under this section, or taken in accordance with an order of the court under this Order exceed the amount deposited or the amount of the security given under subsection (2), the amount of the excess is a debt due to the Government by the claimant, or, if there are two or more claimants, by the claimants jointly and severally.

*[S 92/2013]*

(4) The Controller of Customs may, in any particular case, extend the period referred to in paragraph (e) of subsection (1) of this section to twenty days if he considers it appropriate to do so in all the circumstances.

(5) The Controller of Customs shall not release any goods under subsection (1) of this section unless –

(a) any other legal requirements as to importation of the goods have been met;

(b) any requirements under subsection (2) relating to the deposit of money or the giving of security have been met; and

(c) the release of the goods would not be otherwise contrary to any law.

**Proceedings in respect of infringing copies.**

**114.** (1) Any person may apply to the court for an order that a notice given under section 109(1) or (3) be discharged, and the court may make such an order accordingly.

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(2) Any person may apply to the court for an order that any goods detained under section 113 be released, and the court may make such an order accordingly.

(3) Any person may apply to the court for a decision whether or not any goods the subject of a determination made under subsection (3) of section 110 are infringing copies imported otherwise than for private and domestic use, and the court shall make such a decision accordingly.

(4) Notice of proceedings under subsection (3) of this section shall be served on the Controller of Customs.

(5) In proceedings under subsection (3) of this section, the court shall issue directions as to the service of notice on any person having an interest in the goods, and any such person is entitled –

(a) to appear in those proceedings, whether or not he was served with notice under section 112; and

(b) to appeal against any order made in those proceedings, whether or not he appeared in the proceedings.

(6) No order made in proceedings under subsection (3) of this section shall 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 has been given, until the final determination or abandonment of the proceedings on the appeal.

**Forfeiture of goods by consent.**

**115.** Where any infringing copies have been detained by the Controller of Customs or an officer of customs, the importer or consignee of the goods may, by notice in writing to the Controller of Customs, consent to the goods being forfeited and, on the receipt of such notice by the Controller of Customs, the goods shall thereupon be forfeited.

**Powers of court.**

**116.** (1) Where, in proceedings under subsection (3) of section 114, the court decides that any goods the subject of a determination under subsection (3) of section 110 are infringing copies imported otherwise than for private and domestic use, it shall make an order that the goods be –

- (a) forfeited;
- (b) destroyed; or
- (c) otherwise dealt with as it thinks fit.

(2) In considering what order should be made under subsection (1) of this section, the court shall have regard to –

- (a) whether other remedies available in infringement proceedings would be adequate to compensate the claimant and to protect his interests; and
- (b) the need to ensure that no infringing goods are dealt with in a manner that would adversely affect his interests.

(3) Where more than one person is interested in any infringing goods, the court may direct that the goods be sold, or otherwise dealt with, and the proceeds divided, or shall make such other order as it thinks fit.

(4) Where, in proceedings under subsection (3) of section 114, the court decides that any goods the subject of a determination under subsection (3) of section 110 are not infringing copies imported otherwise than for private and domestic use, it may make an order that any person who is a party to the proceedings pay such compensation as it thinks fit to the importer, consignee or owner of those goods.

**Inspection of goods.**

**117.** (1) An officer of customs shall, in respect of any goods in customs control that are or may be the subject of –

(a) a notice given under section 109(1) or (3);

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(b) an investigation under section 110; or

(c) proceedings under section 114,

allow any person claiming to have an interest in those goods or in an investigation under section 110, or in proceedings under section 114, in relation to those goods, to inspect those goods.

(2) The person referred to in subsection (1) may –

(a) inspect the goods; and

(b) with the approval of an officer of customs, remove the goods or a sample thereof to such place, for such period, and on such conditions as the officer of customs may specify, for the purpose of inspecting them.

(3) Any person who wishes to inspect or remove any goods under this section shall give to the Controller of Customs not less than seventy-two hours notice of his intention to do so.

**Supplementary**

**Power of Controller of Customs to disclose information.**

**118.** Where information relating to infringing copies of any work, sound recording or film mentioned in subsections (1) or (3) of section 109 has been obtained by the Controller of Customs for the purpose of, or in connection with, the exercise of his functions under that section, or under any other law relating to imported goods, he may authorise the disclosure of that information to facilitate the exercise by any person of any function in connection with the investigation or prosecution of an offence under sections 204 or 205 of this Order or under the Merchandise Marks Act (Chapter 96).

### **Protection of Government from liability.**

**119.** (1) In respect of anything done, purported to have been done, or omitted to be done, in the exercise or performance of the functions of the Controller of Customs under sections 109 or 113, the Government shall not be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while such goods are in any customs warehouse or in the lawful custody or control of the Controller of Customs, unless such loss was caused by the wilful neglect or default of the Controller of Customs or of a person employed by the Government in connection with customs matters.

(2) In respect of anything done, purported to have been done, or omitted to be done, as mentioned in subsection (1), the Controller of Customs and no person employed by the Government in connection with customs matters shall be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while such goods are in any customs warehouse or in the lawful custody or control of the Controller of Customs or such other person, unless such loss was caused by his wilful neglect or default.

## **CHAPTER VII**

### **COPYRIGHT LICENSING**

#### **Licensing schemes and licensing bodies**

#### **Licensing schemes and licensing bodies.**

**120.** (1) In this Order, “licensing scheme” means a scheme setting out –

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant copyright licences; and
- (b) the terms on which licences would be granted in those classes of case,

and includes anything in the nature of a scheme, whether described as a scheme, a tariff or any other name.



(2) In this Order, “licensing body” means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.

(3) References in this Chapter to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only –

(a) a single collective work or collective works of which the authors are the same; or

(b) works made by, or by employees of or commissioned by, a single individual, firm, company, or a holding company or a subsidiary company within the meaning of sections 125 and 126 of the Companies Act (Chapter 39).

(4) In this section, “copyright licence” means a licence to do, or authorise the doing of, any of the acts restricted by copyright.

### **References and applications with respect to licensing schemes**

#### **Licensing schemes to which sections 122 to 127 apply.**

**121.** Sections 122 to 127 apply to –

(a) licensing schemes operated by licensing bodies in relation to the copyright in literary, dramatic, musical or artistic works or films (or film sound-tracks when accompanying a film) which cover works of more than one author, so far as they relate to licences for –

- (i) the copying of the work;
- (ii) the performing, playing or showing of the work in public; or
- (iii) the broadcasting of the work or its inclusion in a cable programme service;

(b) all licensing schemes in relation to the copyright in sound recordings (other than film sound-tracks when accompanying a film), broadcasts or cable programmes, or the typographical arrangement of published editions; and

(c) all licensing schemes in relation to the copyright in sound recordings, films or computer programs, so far as they relate to licences for the rental of copies to the public,

and in those sections “licensing scheme” means a licensing scheme of any of those descriptions.

### **Reference of proposed scheme to Tribunal.**

**122.** (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.

(2) The Copyright 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 Copyright Tribunal decides to entertain the reference, it shall consider the matter 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 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 Copyright Tribunal may determine.

### **Reference of scheme to Tribunal.**

**123.** (1) If, while a licensing scheme is in operation, a dispute arises between the operator of the scheme and –

(a) a person claiming that he requires a licence in a case of a description to which the scheme applies; or

(b) an organisation claiming to be representative of such persons, that person or organisation may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Copyright Tribunal under this section shall remain in operation until proceedings on the reference have been concluded.

(3) The Copyright Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme in so far as it relates to cases of the description to which the reference relates, 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 Copyright Tribunal may determine.

#### **Further reference of scheme to Tribunal.**

**124.** (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under sections 122 or 123, or under this section, made an order with respect to the scheme, then, while the order remains in force –

(a) the operator of the scheme;

(b) a person claiming that he requires a licence in a case of the description to which the order applies; or

(c) an organisation claiming to be representative of such persons,

may refer the scheme again to the Copyright Tribunal in so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the leave of the Copyright Tribunal, be referred again to the Copyright 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 Copyright Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

(4) The Copyright Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme in so far as it relates to cases of the description to which the reference relates, as it 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 Copyright Tribunal may determine.

**Application for licence under scheme.**

**125.** (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 to 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 so requested, may apply to the Copyright Tribunal.

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

(a) has refused to grant him or to procure the grant to him of a licence, or has failed to do so within a reasonable time after being so requested, and that in the circumstances it is unreasonable that a licence should not be granted; or

(b) proposes terms for a licence which are unreasonable, may apply to the Copyright Tribunal.

(3) A case shall be regarded as excluded from a licensing scheme for the purpose of subsection (2) if –

(a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or

(b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Copyright 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 Copyright 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 Copyright Tribunal may determine.

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

**126.** (1) Where the Copyright Tribunal has made an order under section 125 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 Copyright Tribunal to review its order.

(2) An application shall not be made, except with the leave of the Copyright Tribunal –

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

(b) if the order was made so as to be in force for fifteen months or less, or as a result of the decision on a previous application under this section is due to expire within fifteen months of that decision, until the last three months before the expiry of the order.

(3) The Copyright Tribunal shall on such an application confirm or vary its order as it 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 scheme.**

**127.** (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal under sections 122, 123 or 124 shall be in force or, as the case may be, remain 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 such a licence under the scheme,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of that copyright in accordance with the scheme.

(3) The Copyright Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before the day on which it was made, but not earlier than the day on which the reference was made or, if later, on which the scheme came into force. 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 paragraph (a) of subsection (2) to charges payable under the scheme shall be construed as a reference to charges so payable under the order.

No such direction may be made where subsection (4) applies.

(4) An order of the Copyright Tribunal under sections 123 or 124 made with respect to a scheme certified for any purpose under section 153 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the day on which the reference was made to the Copyright Tribunal.

(5) Where the Copyright Tribunal has made an order under section 125 and the order remains in force, the person in whose favour the order was 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 them when ascertained; and

(b) complies with the other terms specified in the order, be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of that copyright on the terms specified in the order.

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

#### **Licences to which sections 129 to 132 apply.**

**128.** Sections 129 to 132 apply to the following descriptions of licence granted by a licensing body otherwise than in pursuance of a licensing scheme –

(a) licences relating to the copyright in literary, dramatic, musical or artistic works or films (or film sound-tracks when accompanying a film) which cover works of more than one author, so far as they authorise –

- (i) the copying of the work;
- (ii) the performing, playing or showing of the work in public;
- (iii) the broadcasting of the work or its inclusion in a cable programme service; or
- (iv) the communication to the public by wire or without wire;

(b) any licence in relation to the copyright in a sound recording (other than a film sound-track when accompanying a film), broadcast or cable programme, or the typographical arrangement of a published edition; and

(c) all licences in relation to the copyright in sound recordings, films, or computer programs, so far as they relate to the rental of copies to the public,

and in those sections a licence means a licence of any of those descriptions.

#### **Reference to Tribunal of proposed licence.**

**129.** (1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee.

(2) The Copyright 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 Copyright 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 Copyright Tribunal may determine.

**Reference to Tribunal of expiring licence.**

**130.** (1) A licensee under a licence which is due to expire, by effluxion of time or as the result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such an application may not be made until the last three months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Copyright Tribunal shall remain in operation until proceedings on the reference have been concluded.

(4) If the Copyright Tribunal is satisfied that the application is 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 it may determine to be reasonable in the circumstances.

(5) An order may be made so as to be in force indefinitely or for such period as the Copyright Tribunal may determine.

**Application for review of order.**

**131.** (1) Where the Copyright Tribunal has made an order under sections 129 or 130, the licensing body or the person entitled to the benefit of the order may apply to the Copyright Tribunal to review its order.



(2) An application shall not be made, except with the leave of the Copyright Tribunal –

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

(b) if the order was made so as to be in force for fifteen months or less, or as a result of the decision on a previous application under this section is due to expire within fifteen months of that decision, until the last three months before the expiry of the order.

(3) The Copyright Tribunal shall on an application for review confirm or vary its order as it may determine to be reasonable in the circumstances.

#### **Effect of order of Tribunal.**

**132.** (1) Where the Copyright Tribunal has made an order under sections 129 or 130 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 them when ascertained; and

(b) complies with the other terms specified in the order,

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

(2) The benefit of the order may be assigned –

(a) in the case of an order under section 129, if assignment is not prohibited under the terms of the Copyright Tribunal's order; and

(b) in the case of an order under section 130, if assignment is not prohibited under the terms of the original licence.

(3) The Copyright Tribunal may direct that an order under sections 129 or 130, or an order under section 131 varying such an order, so far as it varies the amount of charges payable, has effect from a date before the day on which it was made, but not earlier than the

day 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 paragraph (a) of subsection (1) to charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to charges so payable under the later order.

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

#### **General considerations: unreasonable discrimination.**

**133.** In determining what is reasonable on a reference or application under this Chapter relating to a licensing scheme or licence, the Copyright Tribunal shall have regard to –

(a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances; and

(b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

#### **Licences for reprographic copying.**

**134.** Where a reference or application is made to the Copyright Tribunal under this Chapter relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, it shall have regard to –

(a) the extent to which published editions of the works in question are otherwise available;

(b) the proportion of the work to be copied; and

(c) the nature of the use to which the copies are likely to be put.

**Licences for educational establishments where works included in broadcasts or cable programmes.**

**135.** (1) This section applies to references or applications under this Chapter relating to licences for the recording by or on behalf of educational establishments of broadcasts or cable programmes which include copyright works, or the making of copies of such recordings, for educational purposes.

(2) The Copyright Tribunal shall, in considering what charges (if any) should be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

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

**136.** (1) This section applies to references and applications under this Chapter relating to licences in respect of sound recordings, films, broadcasts or cable programmes which include, or are to include, any entertainment or other event.

(2) The Copyright Tribunal shall have regard to any conditions imposed by the promoters of the entertainment or other event; and shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

(3) Nothing in this section shall require the Copyright Tribunal to have regard to any such conditions in so far as they –

(a) purport to regulate the charges to be imposed in respect of the grant of licences; or

(b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film, broadcast or cable programme.

**Licences to reflect payments in respect of underlying rights.**

**137.** In considering what charges should be paid for a licence on a reference or application under this Chapter relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes, the Copyright Tribunal shall take into account any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance included in the recording, film, broadcast or cable programme.

**Licences in respect of works included in re-transmissions.**

**138.** (1) This section applies to references or applications under this Chapter relating to licences to include in a broadcast or cable programme service –

- (a) literary, dramatic, musical or artistic works; or
- (b) sound recordings or 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 Copyright Tribunal shall, in considering what charges (if any) should be paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission which adequately remunerates him in respect of transmissions to that area.

(3) So far as the further transmission is to an area outside that to which the first transmission was made, the Copyright Tribunal shall leave the further transmission out of account in considering what charges (if any) should be paid for licences for the first transmission.

**Mention of specific matters not to exclude other relevant considerations.**

**139.** The mention in sections 133 to 138 of specific matters to which the Copyright Tribunal is to have regard in certain classes of case does not affect its general obligation in any case to have regard to all relevant considerations.

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

**Circumstances in which right available.**

**140.** (1) Section 142 applies to the inclusion in a broadcast or cable programme service of any sound recordings if –

(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 subsections (2) or (3) applies; and

(c) the person including those recordings in the broadcast or cable programme service has complied with section 141.

(2) Where the person including the recordings in the broadcast or cable programme service does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, such a licence, being a licence –

(a) whose terms as to payment for including the recordings in the broadcast or cable programme service would be acceptable to him or comply with an order of the Copyright Tribunal under section 143 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 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 (a) of subsection (2).

(4) The references in subsection (2) to refusing to grant, or procure the grant of, a licence, and in subsection (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.

(5) In this section, “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.

**Notice of intention to exercise right.**

**141.** (1) A person intending to avail himself of the right conferred by section 142 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 such proposal or the expiry of a reasonable time, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.

(2) Where he has a licence to include the recordings in a broadcast or cable programme service, the date specified in a notice under paragraph (b) of subsection (1) must not be sooner than the date of expiry of that licence, except in a case falling within subsection (3) of section 140.

(3) Before the person intending to avail himself of the right begins to exercise it, he must –

- (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so; and
- (b) apply to the Copyright Tribunal under section 143 to settle the terms of payment.

**Conditions for exercise of right.**

**142.** (1) A person who, on or after the date specified in a notice under paragraph (b) of subsection (1) of section 141, includes in a broadcast or cable programme service any sound recordings in circumstances in which this section applies, and who –

(a) has complied with any reasonable condition, notice of which was given to him by the licensing body, as to inclusion in the broadcast or cable programme service of those recordings;

(b) has provided that body with such information about their inclusion in the broadcast or cable programme service as it may reasonably require; and

(c) has made the payments to the licensing body that are required by this section,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of that copyright.

(2) Payments are to be made at not less than quarterly intervals in arrears.

(3) The amount of any payment is that determined in accordance with an order of the Copyright Tribunal under section 143 or, if no such order has been made –

(a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under section 141; 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 paragraph (b) of subsection (1) of section 141.

(4) Where this section applies to the inclusion in a broadcast or cable programme service of any sound recordings, it does so in place of any licence.

**Applications to settle payments.**

**143.** (1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(2) An order under subsection (1) has effect from the date the applicant begins to exercise the right conferred by section 142 and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

**References, etc., about conditions, information and other terms.**

**144.** (1) A person exercising the right conferred by section 142, or who has given notice to the Copyright Tribunal of his intention to do so, may refer to the Copyright Tribunal –

(a) any question 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 whether any information is information which the licensing body can reasonably require him to provide.

(2) On a reference under this section, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

**Application for review of order.**

**145.** (1) A person exercising the right conferred by section 142 or the licensing body may apply to the Copyright Tribunal to review any order made under sections 143 or 144.

(2) An application shall not be made, except with the leave of the Copyright Tribunal –

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



(b) if the order was made so as to be in force for fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry of the order.

(3) On the application, the Copyright Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An order under this section shall commence on the day on which it was made or on such later day as may be specified therein by the Copyright Tribunal.

#### **Factors to be taken into account.**

**146.** (1) In determining what is reasonable on an application or reference under sections 143 or 144, or on reviewing any order under section 145, the Copyright Tribunal shall –

(a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by section 142; and

(b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.

(2) In settling the terms of payment under section 143, the Copyright Tribunal shall not be guided by any order it has made other than an order under that section.

(3) Section 138 applies on an application or reference under sections 143, 144 or 145 as it applies on an application or reference relating to a licence.

#### **Implied indemnity in schemes or licences for reprographic copying**

#### **Implied indemnity in certain schemes and licences for reprographic copying.**

**147.** (1) This section applies to –

(a) schemes for licensing reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions; and

(b) licences granted by licensing bodies for such copying, where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.

(2) There is implied –

(a) in every scheme to which this section applies, an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme; and

(b) in every licence to which this section applies, an undertaking by the licensing body to indemnify the licensee,

against any liability incurred by him by reason of his having infringed copyright by making or authorising the making of reprographic copies of a work in circumstances within the apparent scope of his licence.

(3) The circumstances of a case are within the apparent scope of a licence if –

(a) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies; and

(b) the licence does not expressly provide that it does not extend to copyright of the description infringed.

(4) A scheme or licence to which this section applies may contain reasonable provision –

(a) with respect to the manner in which, and time within which, claims under the undertaking implied by this section are to be made; and

(b) enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of any proceedings affecting the amount of his liability to indemnify.

(5) In this section, “liability” includes liability to pay costs; and this section applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against him for infringement of copyright as it applies to sums which he is liable to pay in respect of such infringement.

## Reprographic copying by educational establishments

### Power to extend coverage of scheme or licence.

**148.** (1) This section applies to –

- (a) a licensing scheme to which sections 122 to 127 apply and which is operated by a licensing body; or
- (b) a licence to which sections 129 to 132 apply,

so far as it provides for the grant of licences, or is a licence, authorising the making by or on behalf of educational establishments for the purpose 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 Attorney General with respect to a scheme or licence to which this section applies that –

- (a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it; and
- (b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners,

he may by order provide that the scheme or licence shall extend to those works.

(3) Where he proposes to make such an order, the Attorney General shall give notice of the proposal to –

- (a) the copyright owners;
- (b) the relevant licensing body; and
- (c) such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Attorney General about the proposal within six months from the date of the notice; and if any of them wishes to make oral representations, the Attorney General shall appoint a person to hear such representations and report to him.

(5) In considering whether to make an order, the Attorney General shall take into account any such representations made to him and such other matters as appear to him to be relevant.

**Variation or discharge of order extending scheme or licence.**

**149.** (1) The owner of the copyright in a work in respect of which an order is in force under section 148 may apply to the Attorney General for the variation or discharge of the order, stating his reasons for making the application.

(2) The Attorney General shall not entertain an application made within two years of the making of the original order, or of the making of an order on a previous application under this section, unless it appears to him that the circumstances are exceptional.

(3) On considering the reasons for the application, the Attorney General may confirm the order forthwith; if he does not do so, he shall give notice of the application to –

(a) the licensing body in question; and

(b) such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Attorney General about the application within two months from the date of the notice; and if any of them wishes to make oral representations, the Attorney General shall appoint a person to hear the representations and report to him.

(5) In considering the application, the Attorney General shall take into account the reasons for the application, any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.

(6) The Attorney General may make such order as he thinks fit confirming or discharging the order or, as the case may be, the order as previously varied; or varying, or further varying, it so as to exclude works from it.

### **Appeals against orders.**

**150.** (1) The owner of the copyright in a work which is the subject Appeals of an order under section 148 may appeal to the Copyright Tribunal which may confirm or discharge the order, or vary it so as to exclude works from it, as it thinks fit having regard to the considerations mentioned in subsection (2) of that section.

(2) Where the Attorney General has made an order under section 149 –

(a) the person who applied for the order; and

(b) any person or organisation representative of educational establishments given notice of the application for the order and making representations in accordance with subsection (4) of that section,

may appeal to the Copyright Tribunal which may confirm or discharge the order or make any other order which the Attorney General might have made.

(3) An appeal under this section shall be brought within six weeks of the making of the order or such further period as the Copyright Tribunal may allow.

(4) An order under sections 148 or 149 shall not come into effect until the end of the period of six weeks from the making of the order or, if an appeal is brought before the end of that period, until the appeal proceedings have been disposed of or withdrawn.

(5) If an appeal is brought after the end of that period, any decision of the Copyright Tribunal on the appeal does not affect the validity of anything done in reliance on the order appealed against before that decision took effect.

**Inquiry whether new scheme or general licence required.**

**151.** (1) The Attorney General may appoint a person to inquire into the question whether new provision is required, whether by way of a licensing scheme or general licence, to authorise the making by or on behalf of educational establishments, for the purpose 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 Attorney General not to be covered by an existing licensing scheme or general licence and not to fall within the power conferred by section 148.

(2) The Attorney General, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may prescribe rules relating to the procedure to be followed in relation to an inquiry under subsection (1).

(3) The rules shall provide for notice to be given to –

- (a) persons or organisations appearing to the Attorney General to represent the owners of copyright in works of that description; and
- (b) persons or organisations appearing to the Attorney General to represent educational establishments,

and for the making of written or oral representations by such persons; but without prejudice to the giving of notice to, and the making of representations by, other persons and organisations.

(4) The person appointed to hold the inquiry shall not recommend the making of new provision unless he is satisfied –

- (a) that it would be of advantage to educational establishments to be authorised to make reprographic copies of the works in question; and
- (b) that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners.

(5) If he does recommend the making of new provision, he shall specify any terms, other than terms as to charges payable, on which authorisation under the new provision should be available.

(6) In this section, a general licence means a licence granted by a licensing body which covers all works of the description to which it applies.

**Statutory licence where recommendation not implemented.**

**152.** (1) The Attorney General may, within one year of the making of a recommendation under section 151, 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 purpose 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 those works.

(2) For that purpose, provision shall be regarded as having been made in accordance with the recommendation if –

(a) a certified licensing scheme (which expression in this section means a licensing scheme certified for the purpose of this section under section 153) has been established under which a licence is available to the establishment in question; or

(b) a general licence (which expression in this section has the same meaning as in subsection (6) of section 151) has been –

- (i) granted to or for the benefit of that establishment;
- (ii) referred by or on behalf of that establishment to the Copyright Tribunal under section 129; or
- (iii) offered to or for the benefit of that establishment and refused without such a reference,

and the terms of the scheme or licence accord with the recommendation.

(3) The order shall also provide that any existing licence authorising the making of such copies, not being a licence granted under a certified licensing scheme or a general licence, shall cease to have effect to the extent that it is more restricted or more onerous than the licence provided for by the order.

(4) The order shall provide for the licence to be free of royalty, but otherwise subject to any terms specified in the recommendation and to such other terms as the Attorney General may think fit.

(5) The order may provide that where a copy which would otherwise be an infringing copy is made in accordance with the licence provided by the order but is subsequently dealt with, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright shall be so treated for all subsequent purposes. In this subsection, “dealt with” means sold, let for hire, offered or exposed for sale or hire, or exhibited in public.

(6) The order shall not commence until at least six months after it is made.

### **Certification of licensing schemes**

#### **Certification of licensing schemes.**

**153.** (1) A person operating or proposing to operate a licensing scheme may apply to the Attorney General to certify the scheme for the purpose of sections 39, 64, 77 or 152.

(2) The Attorney General shall by order certify the scheme if he is satisfied that it –

- (a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences; and
- (b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.



(3) The scheme shall be set out in a schedule to the order, and the certification shall take effect –

(a) on such day, not less than eight weeks after the order was made, as may be specified in the order; or

(b) if the scheme is the subject of a reference under section 122, any later date on which the order of the Copyright Tribunal under that section comes into force or the reference is withdrawn.

(4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Attorney General shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under sections 122, 123 or 124, and may do so in any other case if he thinks fit.

(5) The order shall be revoked if the scheme ceases to be operated, and may be revoked if it appears to the Attorney General that it is no longer being operated according to its terms.

## **CHAPTER VIII**

### **THE COPYRIGHT TRIBUNAL**

#### **Copyright Tribunal**

##### **Establishment and jurisdiction.**

**154.** (1) There is established the Copyright Tribunal, for the purpose of exercising the jurisdiction conferred on it by this Order.

(2) The Copyright Tribunal shall consist of a chairman, a deputy chairman and not less than two or more than six other members appointed by His Majesty the Sultan and Yang Di-Pertuan.

(3) A person shall not be qualified for appointment as chairman or deputy chairman unless –

(a) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or of a court having jurisdiction in appeals from any such court; or

(b) he is entitled to practise as a legal practitioner in either such a court and has been so entitled for not less than seven years.

**Membership.**

**155.** (1) The members of the Copyright Tribunal shall hold and vacate office in accordance with their terms of appointment, subject to subsections (2) to (4).

(2) A member may resign his office by notice in writing to His Majesty the Sultan and Yang Di-Pertuan.

(3) His Majesty the Sultan and Yang Di-Pertuan may by notice in writing to any member remove him from office if –

(a) he has become bankrupt or made an arrangement with his creditors; or

(b) he has become incapacitated by physical or mental illness,

or if he is, in the opinion of His Majesty the Sultan and Yang Di-Pertuan, otherwise unable or unfit to perform his duties as a member.

(4) If a member is by reason of physical or mental 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, His Majesty the Sultan and Yang Di-Pertuan may appoint any person to discharge his duties for a period not exceeding six months at one time or, as the case may be, in relation to those proceedings, 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 whose duties he has been appointed to discharge:

Provided that in the case of an appointment to discharge the duties of the chairman or deputy chairman, a person shall not be appointed unless he is qualified for appointment to that office.

**Financial provisions.**

**156.** (1) There shall be paid to the members of the Copyright Tribunal such remuneration and allowances as His Majesty the Sultan and Yang Di-Pertuan may determine.

(2) The Public Service Commission may appoint such staff for the Copyright Tribunal as, with the approval of the Treasury as to numbers and remuneration, it may determine.

**Constitution for purpose of proceedings.**

**157.** (1) For the purpose of any proceedings, the Copyright Tribunal shall consist of –  
(a) a chairman for those proceedings, who shall be either the chairman or the deputy chairman of the Copyright Tribunal appointed under subsection (3) of section 154; and  
(b) two or more other members.

(2) If the members of the Copyright 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 Copyright Tribunal has been heard and one or more members are unable to continue, it 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 for those proceedings is unable to continue, he shall –  
(a) appoint one of the remaining members to act as chairman; and

(b) if the member appointed under paragraph (a) is not the deputy chairman of the Copyright Tribunal or a qualified person, appoint a qualified person to attend the proceedings and advise the Copyright Tribunal on any questions of law arising.

(5) A person is qualified for the purpose of paragraph (b) of subsection (4) if he is qualified for appointment as chairman or deputy chairman of the Copyright Tribunal.

### **Jurisdiction and procedure**

#### **Jurisdiction under Order.**

**158.** The functions of the Copyright Tribunal under this Order are to hear and determine proceedings under sections 122, 123, 124, 125, 126, 129, 130, 131, 143, 144, 150 and 194.

#### **Power to make rules.**

**159.** (1) The Chief Justice may make rules for regulating proceedings before the Copyright Tribunal and as to the fees chargeable in respect of such proceedings.

(2) The rules may apply in relation to the Copyright Tribunal any of the provisions of the Arbitration Act (Chapter 173) and any provision so applied shall be set out in the rules.

(3) Provision shall be made by the rules –

(a) prohibiting the Copyright Tribunal from entertaining a reference under sections 122, 123 or 124 by a representative organisation unless it is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent;

(b) specifying the parties to any proceedings and enabling the Copyright Tribunal to make a party to the proceedings any person or organisation satisfying it that they have a substantial interest in the matter; and

(c) requiring the Copyright Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.

(4) The Chief Justice may make rules of court regulating the practice and procedure in relation to appeals from a decision of the Copyright Tribunal to the High Court under section 161, and making provision for the costs of such appeals and for any matters incidental to or consequential upon any such appeal.

**Costs, proof of orders, etc.**

**160.** (1) The Copyright Tribunal may order that the costs of a party to proceedings before it shall be paid by such other party as it may direct; and may tax or settle the amount of the costs, or direct in what manner they are to be taxed.

(2) A document purporting to be a copy of an order of the Copyright Tribunal and to be certified by the chairman for the proceedings at which it was made to be a true copy shall, in any proceedings, be sufficient evidence of the order unless the contrary is proved.

**Appeals**

**Appeal to court on point of law.**

**161.** (1) An appeal lies to the High Court on any point of law arising from a decision of the Copyright Tribunal.

(2) Provision shall be made by rules under section 159 limiting the time within which such an appeal may be brought.

(3) Provision may be made by rules or rules of court under that section —

(a) for suspending, or authorising or requiring the Copyright Tribunal to suspend, the operation of its order in a case where its decision has been appealed against;

(b) for modifying in relation to an order of the Copyright Tribunal whose operation has been suspended the operation of any provision of this Order as to the effect of such an order;

(c) for the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the Copyright Tribunal will be informed of its suspension.

## CHAPTER IX

### QUALIFICATION FOR AND EXTENT OF COPYRIGHT PROTECTION

#### Qualification for copyright protection

##### **Qualification for copyright protection.**

**162.** (1) Copyright does not subsist in a work unless the requirements of this Chapter with respect to qualification for copyright protection have been 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) Subsection (1) does not apply in relation to Government copyright, Legislative Council copyright and copyright subsisting under section 172.

(3) If the requirements of this Chapter with respect to qualification, or of sections 167, 169 and 172, are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

##### **Qualification by reference to author.**

**163.** (1) A work qualifies for copyright protection if the author was at the material time —

- (a) a citizen of Brunei Darussalam;

(b) an individual domiciled or resident in Brunei Darussalam or in any country to which section 166 applies; or

[S 92/2013]

(c) a body incorporated under the law of Brunei Darussalam or of any country to which section 166 applies .

[S 92/2013]

(2) A work of joint authorship qualifies for copyright protection if at the material time any of the authors satisfies the requirements of subsection (1); but where a work qualifies for copyright protection only under this section, only those authors who satisfy those requirements shall be taken into account for the purposes of subsections (1) and (2) of section 13, subsections (1) and (2) of section 14, subsection (4) of section 11 so far as it applies for the purpose of subsection (2) of section 14, and section 61.

(3) The material time in relation to a literary, dramatic, musical or artistic work is —

(a) in the case of an unpublished work, when the work was made or, if the making of the work extended over a period, a substantial part of that period;

(b) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his death.

(4) The material time in relation to other descriptions of work is —

(a) in the case of a sound recording or film, when it was made;

(b) in the case of a broadcast, when it was made;

(c) in the case of a cable programme, when it was included in a cable programme service;

(d) in the case of the typographical arrangement of a published edition, when the edition was first published.

#### **Qualification by reference to country of first publication.**

**164.** (1) A literary, dramatic, musical or artistic work, a sound recording or film, or the typographical arrangement of a published edition, qualifies for copyright protection if it was first published —

- (a) in Brunei Darussalam; or
- (b) in a country to which section 166 applies.

[S 92/2013]

(2) For the purpose of this section, publication in one country shall not be regarded as other than the first publication by reason of simultaneous publication elsewhere; and for this purpose publication elsewhere within the previous thirty days shall be treated as simultaneous.

**Qualification by reference to place of transmission.**

**165.** A broadcast qualifies for copyright protection if it was made from, and a cable programme qualifies for copyright protection if it was sent from –

- (a) Brunei Darussalam; or
- (b) a country to which section 166 applies.

[S 92/2013]

**Application of this Order to other works**

**Application of this Order to other works.**

**166.** This Order also applies to a work that is eligible for protection in Brunei Darussalam by virtue of an international convention or other international agreement to which Brunei Darussalam is a party.

**CHAPTER X**

**MISCELLANEOUS AND GENERAL**

**Government and Legislative Council copyright**

**Government copyright.**

**167.** (1) Where a work has been made by His Majesty the Sultan and Yang Di-Pertuan or by a public officer in the course of his duties —



(a) it qualifies for copyright protection notwithstanding subsection (1) of section 162; and

(b) His Majesty the Sultan and Yang Di-Pertuan is the first owner of any copyright in the work.

(2) Copyright in such a work is referred to in this Part as Government copyright, notwithstanding that it may be, or may have been, assigned to another person.

(3) Government copyright in a literary, dramatic, musical or artistic work continues to subsist —

(a) until the end of the period of one hundred and twenty-five years from the end of the year in which it was made; or

(b) if it was published commercially before the end of the period of seventy-five years from the end of the year in which it was made, until the end of the period of fifty years from the end of the year in which it was first so published.

(4) In the case of a work of joint authorship where one or more but not all of the authors are persons falling within subsection (1), this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution of the work.

(5) Except as mentioned in this section, and subject to any express exclusion elsewhere in this Part, this Part applies in relation to Government copyright as to other copyright.

(6) This section does not apply to work if, or to the extent that, Legislative Council copyright subsists in the work.

#### **Copyright in Acts and Emergency Orders.**

**168.** (1) His Majesty the Sultan and Yang Di-Pertuan is entitled to copyright in —

(a) every Act; and

(b) every Order made under subsection (3) of section 83 of the Constitution.

(2) Copyright in an Act subsists from the time His Majesty the Sultan and Yang Di-Pertuan assents thereto until the end of the period of fifty years from the end of the year in which such assent was given.

(3) Copyright in any such Order subsists from the time it was made until the end of the period of fifty years from the end of the year in which it was made.

(4) References in this Part to Government copyright (except in section 167) include copyright under this section; and, except as mentioned in subsections (1), (2) or (3), the provisions of this Part apply in relation to copyright under this section as to other Government copyright.

(5) No other copyright, or right in the nature of copyright, subsists in an Act or in any such Order.

**Legislative Council copyright.**

**169.** (1) Where a work has been made by or under the direction or control of the Legislative Council –

(a) it qualifies for copyright protection notwithstanding subsection (1) of section 162; and

(b) the Legislative Council is the first owner of any copyright in the work.

(2) Copyright in such a work is referred to in this Order as Legislative Council copyright, notwithstanding that it may be, or have been, assigned to another person.

(3) Legislative Council copyright in a literary, dramatic, musical or artistic work subsists until the end of the period of fifty years from the end of the year in which it was made.

(4) For the purpose of this section, works made by or under the direction or control of the Legislative Council include –

(a) any work made by an officer or employee of the Legislative Council in the course of his duties; and

(b) any sound recording, film, live broadcast or live cable programme of the proceedings of the Legislative Council;

but a work shall not be regarded as made by or under the direction or control of the Legislative Council by reason only of its being commissioned by or on behalf of the Legislative Council.

(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 Legislative Council, this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

(6) Except as mentioned in this section, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Legislative Council copyright as to other copyright.

#### **Copyright in Legislative Council Bills.**

**170.** (1) Copyright in every Bill introduced into the Legislative Council belongs, in accordance with the following provisions, to the Legislative Council.

(2) Copyright in a public Bill belongs to the Legislative Council and subsists from the time when the text of the Bill was handed in to the Legislative Council.

(3) Copyright in a private Bill belongs to the Legislative Council and subsists from the time when a copy of it was first deposited in the Legislative Council.

(4) Copyright in a personal Bill belongs to the Legislative Council, and subsists from the time when it was given a First Reading.

(5) Copyright under this section ceases –

(a) when His Majesty the Sultan and Yang Di-Pertuan has assented to the Bill;

(b) if the Bill is not assented to, on its withdrawal or rejection or at the end of the session.

(6) References in this Part to Legislative Council copyright, except in section 169, include copyright under this section; and, except as mentioned in this section, the provisions of this Part apply in relation to copyright under this section as to other Legislative Council copyright.

(7) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having passed in one session, is re-introduced in a subsequent.

**Legislative Council: supplementary provisions with respect to copyright.**

**171.** (1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, the Legislative Council shall be deemed to have the legal capacity of a body corporate, which shall not be affected by any prorogation, dissolution or suspension.

(2) The functions of the Legislative Council as owner of copyright shall be exercised by the Speaker on its behalf.

(3) For this purpose, a person who on the dissolution of the Legislative Council was Speaker of the Legislative Council may continue to act until the corresponding appointment is made in the next session.

(4) Legal proceedings relating to copyright shall be brought by or against the Legislative Council in the name of the Speaker of the Legislative Council.

## **Other miscellaneous provisions**

### **Copyright vesting in certain international organisations.**

**172.** (1) Where an original literary, dramatic, musical or artistic work –

- (a) is made by an officer or employee of, or is published by, an international organisation to which this section applies; and
- (b) does not qualify for copyright protection under sections 163 or 164,

copyright nevertheless subsists in the work by virtue of this section and the organisation is the first owner of that copyright.

(2) The international organisations to which this section applies are those as to which His Majesty the Sultan and Yang Di-Pertuan has by order declared that it is expedient that this section should apply.

(3) Copyright of which an international organisation is the first owner by virtue of this section continues to subsist until the end of the period of fifty years from the end of the year in which the work was made or such longer period as may be specified by His Majesty the Sultan and Yang Di- Pertuan by order for the purpose of complying with the international obligations of Brunei Darussalam.

(4) An international organisation to which this section applies shall be deemed to have, and to have had at all material times, the legal capacity of a body corporate for the purpose of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright.

### **Folklore, etc.: anonymous unpublished works.**

**173.** (1) Where, in the case of an unpublished literary, dramatic, musical or artistic work of unknown authorship, there is evidence that the author (or, in the case of a joint work, any of the authors) was a qualifying individual by connection with a country outside Brunei Darussalam, it shall be presumed until the contrary is proved that he was such a qualifying individual and that copyright accordingly subsists in the work, subject to this Part.

(2) If under the law of that country a body is appointed to protect and enforce copyright in such works, His Majesty the Sultan and Yang Di-Pertuan may by order designate that body for the purpose of this section.

(3) A body so designated shall be recognised in Brunei Darussalam as having authority to do in place of the copyright owner anything, other than the assignment of copyright, which it is empowered to do under the law of that country, including the bringing of proceedings in its own name.

(4) In subsection (1), a “qualifying individual” means an individual who at the material time (within the meaning of section 163) was a person whose works qualified under that section for copyright protection.

(5) This section does not apply if there has been an assignment of copyright in the work by the author of which notice has been given to the designated body; and nothing in this section affects the validity of an assignment of copyright made, or licence granted, by the author or a person lawfully claiming under him.

### **Transitional provisions and savings, etc.**

#### **Transitional provisions and savings. First Schedule**

**174.** The transitional provisions and savings contained in the First Schedule relating to works made, and acts or events occurring before commencement, and otherwise with respect to the operation of this Part, shall have effect for the purposes of this Order.

#### **Amendment of First Schedule.**

**175.** The Attorney General, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may by order amend the First Schedule.

### **Rights and privileges under any law.**

**176.** (1) Subject to subsection (5) of section 168 and subsection (7) of section 170, nothing in this Part affects –

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- (a) any right or privilege of any person under any written law;
- (b) any right or privilege of His Majesty the Sultan and Yang Di-Pertuan subsisting otherwise than under a written law;
- (c) any right or privilege of the Legislative Council;
- (d) the right of any person to sell, use or otherwise deal with articles forfeited under any law relating to customs or excise;
- (e) the operation of any rule of equity relating to breaches of trust or confidence.

(2) Subject to subsection (1), no copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Part or some other written law in that behalf.

(3) Nothing in this Part affects any law preventing or restricting the enforcement of copyright, on the grounds of public interest or otherwise.

(4) Nothing in this Part affects any right of action or other remedy, whether civil or criminal, available otherwise than under this Part in respect of acts infringing any of the rights conferred by Chapter IV.

### **Interpretation**

#### **Meaning of “educational establishment”, etc.**

**177.** (1) In this Order, “educational establishment” means –

- (a) any educational institution, as defined in section 2 of the Education Act (Chapter 210); and

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(b) any other description of educational establishment specified for the purpose of this Part by order of the Minister responsible for education matters.

(2) The Attorney General may by order provide that the provisions of this Part relating to educational establishments shall apply, with such modifications and adaptations as may be specified, to teachers who are employed to give instruction to pupils who are unable to attend an educational establishment.

(3) In relation to an educational establishment, the expressions “teacher” and “pupil” in this Part include, respectively, the person who gives and any person who receives instruction.

(4) References in this Part to anything being done on behalf of an educational establishment are to its being done for the purpose of that establishment by any person.

#### **Meaning of “publication” and “commercial publication”.**

**178.** (1) In this Order, “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 Order but subject to subsection (4), “commercial publication”, in relation to a literary, dramatic, musical or artistic work, means –

(a) issuing copies 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 it 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 purpose of this Part, and references to a 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 purpose 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 purpose of an electronic retrieval system);
- (c) in the case of a sound recording or film –
  - (i) the work being played or shown in public; or
  - (ii) the broadcasting of the work or its inclusion in a cable programme service.

(5) References in this Part to publication or commercial publication do not include publication which is merely colourable and not intended to satisfy the reasonable requirements of the public.

(6) No account shall be taken for the purpose of this section of any unauthorised act.

**Requirement of signature: application in relation to body corporate.**

**179.** (1) The requirements in paragraph (b) of subsection (3) of section 81, subsection (3) of section 93, subsection (1) of section 94 and subsection (1) of section 95 that a document be signed by or on behalf of a person are satisfied, in the case of a body corporate, by the affixing of its seal.

(2) The requirements in paragraph (b) of subsection (2) of section 81 and subsection (2) of section 90 that a document be signed by a person are satisfied, in the case of a body corporate, by signature on behalf of the body or by the affixing of its seal.

**PART II**

**RIGHTS IN PERFORMANCES**

**Introductory**

**Rights conferred on performers and persons having recording rights.**

**180.** (1) This Part confers rights –

- (a) on a performer, by requiring his consent to the exploitation of his performances; and
- (d) on a person having recording rights in relation to a performance, in relation to recordings made without his consent or that of the performer,

and creates offences in relation to dealing with or using illicit recordings and certain other related acts.

(2) In this Part –

“performance” means –

- (a) a dramatic performance (which includes dance and mime);
- (b) a musical performance;

- (c) a reading or recitation of a literary work; or
- (d) a performance of a variety act or any similar presentation,

which is, or so far as it is, a live performance given by one or more individuals;

“recording”, in relation to a performance, means a film or sound recording –

- (a) made directly from the live performance;
- (b) made from a broadcast of, or cable programme including, the performance; or
- (c) made, directly or indirectly, from another recording of the performance.

(3) The rights conferred by this Part apply in relation to performances taking place before commencement; but no act done before commencement, or in pursuance of arrangements made before commencement, shall be regarded as infringing those rights.

(4) Subsections (3), (4) and (5) of section 8, subsection (4) of section 9, and subsection (4) of section 21, apply for the purposes of this Part, in relation to an infringement of the rights conferred by this Part, as they apply for the purposes of Part I in relation to an infringement of copyright.

(5) The rights conferred by this Part are independent of –

- (a) any copyright in, or moral rights relating to, any work performed or any film or sound recording of, or broadcast or cable programme including, the performance; and
- (b) any other right or obligation arising otherwise than under this Part.

### **Performers' rights**

#### **Qualifying performances.**

**181.** A performance is a qualifying performance for the purpose of the provisions of this Part relating to performers' rights if it is given by a performer to whom this Part applies.

**Consent required for recording or live transmission of performance.**

- 182.** (1) A performer's rights are infringed by a person who, without his consent –
- (a) makes, otherwise than for his private and domestic use, a recording of the whole or any substantial part of a qualifying performance; or
  - (b) broadcasts live, or includes live in a cable programme service, the whole or any substantial part of a qualifying performance and communicates his live performance to the public.

(2) In an action for infringement of a performer's rights brought under this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

**Infringement of performer's rights by use of recording.**

- 183.** A performer's rights are infringed by a person who, without his consent –
- (a) shows or plays in public the whole or any substantial part of a qualifying performance; or
  - (b) broadcasts or includes in a cable programme service the whole or any substantial part of a qualifying performance,
- by means of a recording which was, and which that person knew or had reason to believe was, made without the performer's consent.

**Infringement of performer's rights by importing, etc., illicit recording.**

- 184.** (1) A performer's rights are infringed by a person who, without his consent –
- (a) imports otherwise than for his private and domestic use; or
  - (b) in the course of a business, possesses, sells, lets for hire, offers or exposes for sale or hire, or distributes,
- a recording of a qualifying performance which is, and which that person knew or had reason to believe was, an illicit recording.

(2) Where in an action for infringement of a performer's rights brought under this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2), "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

### **Rights of person having recording rights**

#### **Infringement of performer's rights by rental.**

**185.** A performer's rights are infringed by a person who, without his consent, rents to the public copies of a recording of the whole or a substantial part of a qualifying performance.

#### **Infringement of performer's rights by making fixed performance available to public by wire or wireless.**

**186.** A performer's rights are infringed by a person who, without his consent, makes available to the public his fixed performance, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them.

#### **Infringement of performer's rights by making fixed performance available to public by sale, etc.**

**187.** A performer's rights are infringed by a person who, without his consent, makes available to the public a fixation of his performance, or copies thereof, through sale or other transfer of ownership.

#### **Performer's moral rights.**

**188.** (1) Notwithstanding his economic rights, and even where he is no longer the owner of those rights, a performer has the right as regards a live aural performance and a performance fixed in a sound recording –

(a) to be identified as the performer of his performance, except where omission is dictated by the manner of the use of the performance; and

(b) to object to any distortion, mutilation or any other modification of his performance which is prejudicial to his honour or reputation.

(2) None of the rights mentioned in subsection (1) shall be transmissible during the life of the performer, but the right to exercise them shall be transmissible by testamentary disposition or by operation of law following his death.

(3) A performer may waive any of the rights mentioned in subsection (1), provided that the waiver is in writing and clearly specifies the right waived and the circumstances in which the waiver applies, and provided further that any waiver of the right mentioned in paragraph (b) of subsection (1) specifies the nature and extent of the modification or other action in respect of which it is waived. On the death of a performer, the person upon whom the moral rights have devolved shall have the right to waive those rights.

**Exclusive recording contracts and persons having recording rights.**

**189.** (1) In this Order, an “exclusive recording contract” means a contract between a performer and another person under which that person is entitled to the exclusion of all other persons (including the performer) to make recordings of one or more of his performances with a view to their commercial exploitation.

(2) References in this Part to a person having recording rights in relation to a performance are, subject to subsection (3), to a person –

(a) who is party to and has the benefit of an exclusive recording contract to which the performance is subject; or

(b) to whom the benefit of such a contract has been assigned, and who is a qualifying person.

(3) If a performance is subject to an exclusive recording contract but the person mentioned in subsection (2) is not a qualifying person, references in this Part to a person having recording rights in relation to the performance are to any person –

(a) who is licensed by such a person to make recordings of the performance with a view to their commercial exploitation; or

(b) to whom the benefit of such a licence has been assigned,  
and who is a qualifying person.

In this section, “with a view to commercial exploitation” means with a view to the recordings being sold, let for hire, or shown or played in public.

### **Consent required for recording performance subject to exclusive contract.**

**190.** (1) The rights of a person having recording rights in relation to a performance are infringed by a person who, without his consent or that of the performer, makes a recording of the whole or any substantial part of the performance, otherwise than for his private and domestic use.

(2) In an action for infringement of those rights brought under this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

### **Infringement of recording rights by use of recording made without consent.**

**191.** (1) The rights of a person having recording rights in relation to a performance are infringed by a person who, without his consent or, in the case of a qualifying performance, that of the performer –

(a) shows or plays in public the whole or any substantial part of the performance; or

(b) broadcasts or includes in a cable programme service the whole or any substantial part of the performance,

by means of a recording which was, and which that person knew or had reason to believe was, made without the appropriate consent.

- (2) The reference in subsection (1) to the appropriate consent is to the consent of –
- (a) the performer; or
  - (b) the person who at the time the consent was given had recording rights in relation to the performance (or, if there was more than one such person, of all of them).

**Infringement of recording rights by importing, etc., illicit recording.**

**192.** (1) The rights of a person having recording rights in relation to a performance are infringed by a person who, without his consent or, in the case of a qualifying performance, that of the performer –

- (a) imports otherwise than for his private and domestic use; or
- (b) in the course of a business, possesses, sells, lets for hire, offers or exposes for sale or hire, or distributes,

a recording of the performance which was, and which that person knew or had reason to believe was, an illicit recording.

(2) Where in an action for infringement of those rights brought under this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2), “innocently acquired” means that the person acquiring the recording did not know, and had no reason to believe, that it was an illicit recording.

**Exceptions to rights conferred**

**Acts permitted notwithstanding rights conferred by this Part.**

**193.** The Second Schedule specifies acts which may be done notwithstanding the rights conferred by this Part.



**Power of Tribunal to give consent on behalf of certain performers.**

**194.** (1) The Copyright Tribunal may, on the application of a person wishing to make a recording from a previous recording of a performance, give consent in a case where –

(a) the identity or whereabouts of a performer cannot be ascertained by reasonable inquiry; or

(b) a performer unreasonably withholds his consent.

(2) Consent given by the Copyright Tribunal has effect as consent of the performer for the purpose of –

(a) the provisions of this Part relating to performers' rights; and

(b) paragraph (a) of subsection (3) of section 205,

and may be given subject to any conditions specified in the Tribunal's consent.

(3) The Copyright Tribunal shall not give consent under paragraph (a) of subsection (1) except after the service or publication of such notices as may be required by rules made under section 159 or as it may in any particular case direct.

(4) The Copyright Tribunal shall not give consent under paragraph (b) of subsection (1) unless it is satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interest of his; but it shall be for the performer to show what his reasons are for withholding consent, and in default of evidence as to his reasons the Copyright Tribunal may draw such inferences as it thinks fit.

(5) In any case, the Copyright Tribunal shall take into account –

(a) whether the original recording was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further recording;

(b) whether the making of the further recording is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purpose for which, the original recording was made.

(6) Where the Copyright Tribunal gives consent under this section it shall, in default of agreement between the applicant and the performer, make such order as it thinks fit as to the payment to be made to the performer in consideration of consent being given.

### **Duration and transmission of rights; consent**

#### **Duration of rights.**

**195.** The rights conferred by this Part continue to subsist in relation to a performance until the end of the period of fifty years from the end of the year in which the performance took place.

#### **Transmission of rights.**

**196.** (1) The rights conferred by this Part are not assignable or transmissible, except to the extent that performers' rights are transmissible in accordance with this section.

(2) On the death of a person entitled to performer's rights –

(a) the rights pass to such person as he may by will specifically direct; and

(b) if, or to the extent that, there is no such direction, the rights are exercisable by his personal representative,

and references in this Part to the performer, in the context of the person having performers' rights, shall be construed as references to the person for the time being entitled to exercise those rights.

(3) Where under paragraph (a) of subsection (2) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.

(4) Subsections (1), (2) and (3) do not affect paragraph (b) of subsection (2), or paragraph (b) of subsection (3), of section 189, so far as those provisions confer rights under this Part on a person to whom the benefit of a contract or licence has been assigned.

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

### **Consent.**

**197.** (1) Consent for the purpose of this Part may be given in relation to a specific performance, a specified description of performances, or performances generally, and may relate to past or future performances.

(2) A person having recording rights in a performance is bound by any consent given by a person through whom he derives his rights under the exclusive recording contract or a licence, in the same way as if the consent had been given by him.

(3) Where a right conferred by this Part passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by him.

## **Remedies for infringement**

### **Infringement actionable as breach of statutory duty.**

**198.** An infringement of any of the rights conferred by this Part is actionable by the person entitled to the right as a breach of statutory duty.

### **Order for delivery up.**

**199.** (1) Where a person has in his possession, custody or control in the course of a business an illicit recording of a performance, a person having performer's rights or recording rights in relation to the performance may apply to the court for an order that the recording be delivered up to him or to such other person as it may direct.

(2) An application shall not be made after the end of the period specified in section 211; and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 212.

(3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 212 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

(4) Nothing in this section affects any other power of the court.

**Right to seize illicit recordings.**

**200.** (1) An illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order under section 199, may be seized and detained by him or a person authorised by him. The right to seize and detain is exercisable subject to subsections (2), (3) and (4) and is subject to any decision of the court under section 212.

(2) Before anything is seized under this section, notice of the time and place of the proposed seizure must be given to a local police station.

(3) A person may for the purpose of exercising the right conferred by this section enter any place to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his, and may not use any force.

(4) At the time when anything is seized under this section, there shall be left at the place where it was seized a notice containing particulars as to the person by whom or on whose authority the seizure was made and the grounds on which it was made.

**Meaning of “illicit recording”.**

**201.** (1) In this Order, “illicit recording”, in relation to a performance, shall be construed in accordance with this section.

(2) For the purpose of a performer's rights, a recording of the whole or any substantial part of a performance of his is an illicit recording if it is made, otherwise than for private purposes, without his consent.

(3) For the purpose of the rights of a person having recording rights, a recording of the whole or any substantial part of a performance subject to the exclusive recording contract is an illicit recording if it is made, otherwise than for private purposes, without his consent or that of the performer.

(4) For the purposes of sections 205 and 209, a recording is an illicit recording if it is an illicit recording for any purpose mentioned in subsections (2) or (3).

#### **Second Schedule.**

(5) In this Part, "illicit recording" includes a recording falling to be treated as an illicit recording under paragraphs 4(3), 6(2), 12(2) or 16(3) of the Second Schedule, but otherwise does not include a recording made under any of the provisions of that Schedule.

(6) It is immaterial for the purpose of this section where the recording was made.

#### **Application of this Part**

##### **Application of this Part.**

**202.** This Part applies to –

- (a) a performer who is a citizen of Brunei Darussalam;
- (b) a performer who is not a citizen of Brunei Darussalam, but whose performance –
  - (i) takes place in Brunei Darussalam;
  - (ii) has been incorporated in a sound recording that is protected under this Order; or
  - (iii) has not been fixed in a sound recording but is included in a broadcast qualifying for protection under this Order; and

(c) a performer who is eligible for protection in Brunei Darussalam by virtue of an international convention or other international agreement to which Brunei Darussalam is a party.

### **PART III**

#### **MISCELLANEOUS, OFFENCES AND GENERAL PROVISIONS**

##### **Devices designed to circumvent copy-protection, etc.**

##### **Provisions relating to abuses in respect of technical means of protection.**

**203.** (1) This section applies 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 following acts are unlawful and, in the application of any provision of this Order relating to civil or criminal remedies, shall be treated as infringements of the rights protected by this Order –

(a) the manufacture or importation for sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work, sound recording or broadcast, or to impair the quality of any copy thereof;

(b) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted program broadcast or otherwise communicated to the public, including by satellite, by any person not entitled to receive that program;

(c) the removal or alteration of any electronic rights management information without authority;

(d) the distribution, importation for distribution, broadcasting, communication or making available to the public, without authority, of a work, performance, sound recording or broadcast, by any person knowing or having reason

to believe that electronic rights management information has been removed or altered without authority.

(3) In the application of any provision of this Order relating to civil or criminal remedies, any illicit device and means mentioned in subsection (2) and any copy from which rights management information has been removed or in which such information has been altered, shall be treated as an infringing copy, and any illicit act mentioned in subsection (2) shall be treated as an infringement of copyright to which the provisions of this Order relating to civil and criminal remedies are applicable.

(4) Sections 106, 107 and 108 apply to proceedings under this section as to proceedings under Part I.

(5) Section 212 applies, with the necessary modifications, to the disposal of anything delivered up or seized under subsection (3).

(6) In this section, “rights management information” means any information which identifies the author, work, producer of a sound recording, broadcaster, performer, performance, or any owner of any right under this Order, any information about the terms and conditions of use of a work or performance, and any number or code that represents such information, when any of those items of information is attached to a copy of a work or a fixed performance, or appears in connection with the broadcasting, communication to the public or making available to the public of that work or fixed performance.

**Penalty for breach of section 203(2).**

**203A.** Any person who commits an act referred to in section 203(2) is guilty of an offence and liable on conviction to a fine not exceeding \$250,000, imprisonment for a term not exceeding 3 years or both, and in respect of a second or subsequent offence, to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

*[S 92/2013]*

## Offences

### **Criminal liability for making or dealing with infringing articles, etc.**

**204.** (1) A person commits an offence who, without the licence of the copyright owner –

- (a) makes for sale or hire;
- (b) possesses, has custody or control of, or imports otherwise than for his private and domestic use;

*[S 92/2013]*

- (c) communicates the work to the public;
- (d) in the course of a business, possesses, with a view to committing any act infringing the copyright;

(e) 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

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

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

(2) A person commits an offence who –

(a) makes an article specifically designed or adapted for making copies of a particular copyright work; or

(b) has such an article in his possession,

if he knew or had reason to believe that it was 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 –

(a) by the public performance of a literary, dramatic or musical work; or

(b) by the playing or showing in public of a sound recording or film, any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.

(4) Sections 106, 107 and 108 do not apply to proceedings for an offence under this section; but without prejudice to their application in proceedings for an order under section 209.

(5) A person guilty of an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000 for the infringing copy of a work or for each infringing copy of a work in respect of which the offence was committed, imprisonment for a term not exceeding 5 years or both, and in respect of a second or subsequent offence, to a fine not exceeding \$20,000 for the infringing copy of a work or for each infringing copy of a work in respect of which the offence was committed, imprisonment for a term not exceeding 10 years or both.

*[S 92/2013]*

(6) A person guilty of an offence against subsection (2) is liable on conviction to a fine not exceeding \$20,000 for each infringing copy of a work in respect of which the offence was committed, imprisonment for a term not exceeding 10 years or both, and in respect of a second or subsequent offence, to a fine not exceeding \$40,000 for each infringing copy of a work in respect of which the offence was committed, imprisonment for a term not exceeding 20 years or both.

*[S 92/2013]*

**Presumption under section 204(1)(b).** [S 92/2013]

**204A.** For the purpose of section 204(1)(b), any person who has in his possession, custody or control five or more infringing copies of a work in the same form shall, unless the contrary is proved, be presumed to be in possession, custody or control of or to have imported such copies otherwise than for his private or domestic use.

**Presumption under section 204(1)(e).** [S 92/2013]

**204B.** For the purpose of section 204(1)(e), any person who has in his possession five or more infringing copies of a work or other subject matter shall, unless the contrary is proved, be presumed to be in possession of such copies in the course of a business.

**Criminal liability for making, etc illicit recordings.** [S 92/2013]

**205.** (1) A person commits an offence who, without sufficient consent –

- (a) makes for sale or hire;
- (b) possesses, has custody or control of, or imports otherwise than for his private and domestic use;

[S 92/2013]

- (c) makes available to the public;
- (d) in the course of a business, possesses, with a view to committing any act infringing the rights conferred by this Part; or
- (e) in the course of a business –
  - (i) sells or lets for hire;
  - (ii) offers or exposes for sale or hire; or
  - (iii) distributes,

a recording which is, and which he knows or has reason to believe is, an illicit recording.

(2) A person commits an offence who causes a recording of a performance made without sufficient consent to be –

- (a) shown or played in public; or
- (b) broadcast or included in a cable programme service,

thereby infringing any of the rights conferred by this Part, if he knew or had reason to believe that those rights are thereby infringed.

- (3) In subsections (1) and (2), “sufficient consent” means –
- (a) in the case of a qualifying performance, the consent of the performer;
- and
- (b) in the case of a non-qualifying performance subject to an exclusive recording contract –
- (i) for the purpose of paragraph (a) of subsection (1), the consent of the performer or the person having recording rights; and
  - (ii) for the purpose of paragraphs (b), (c) and (d) of subsection (1), and of subsection (2), the consent of the person having recording rights.

The references in this subsection to the person having recording rights are to the person having those rights at the time the consent was given or, if there is more than one such person, to all of them.

#### **Second Schedule.**

(4) No offence is committed under subsections (1) or (2) by the commission of an act which under any provision of the Second Schedule may be done without infringing the rights conferred by this Part.

(5) A person guilty of an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000 for the infringing copy of a work or for each infringing copy of a work in respect of which the offence was committed, imprisonment for a term not exceeding 5 years or both, and in respect of a second or subsequent offence, to a fine not exceeding \$20,000 for the infringing copy of a work or for each infringing copy of a work in respect of which the offence was committed, imprisonment for a term not exceeding 10 years or both.

*[S 92/2013]*

(6) A person guilty of any other offence against this section is liable on conviction to a fine not exceeding \$25,000, imprisonment for a term not exceeding 3 years or both.

*[S 92/2013]*

**Presumption under section 205(1)(b).** [S 92/2013]

**205A.** For the purpose of section 205(1)(b), any person who has in his possession, custody or control, five or more infringing copies of a work in the same form shall, unless the contrary is proved, be presumed to be in possession, custody or control of or to have imported such copies otherwise than for his private and domestic use.

**Presumption under section 205(1)(e).** [S 92/2013]

**205B.** For the purpose of section 205(1)(e), any person who has in his possession five or more infringing copies of a work shall, unless the contrary is proved, be presumed to be in possession of such copies in the course of a business.

**Application of Chapter 96 in enforcement.**

**206.** (*Repealed by S 92/2013*).

**False representation of authority to give consent.**

**207.** (1) It is an offence for a person to falsely represent that he is authorised by any person to give consent for the purpose of this Part in relation to a performance, unless he believes on reasonable grounds that he is so authorised.

(2) A person guilty of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding six months, a fine not exceeding five thousand dollars or both.

**General penalty for offences not otherwise provided for.** [S 92/2013]

**207A.** Any person guilty of any offence against this Order is liable on conviction, if no other penalty is provided, to a fine not exceeding \$25,000, imprisonment for a term not exceeding 3 years or both.

**Offences committed by partnerships and bodies corporate.**

**208.** (1) Where an offence under this Order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any act or default on the part of, a director, manager, secretary or other similar officer of that body, or of a person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of that offence and liable to be proceeded against and punished accordingly.

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

(3) In relation to a body corporate whose affairs are managed by its members, “director”, in subsection (1), means any member of the body corporate.

**Order for delivery up in criminal proceedings.**

**209.** (1) The court before which proceedings are brought against a person for an offence under section 204 may, if satisfied that at the time of his arrest or charge –

(a) he had in his possession, custody or control an infringing copy of a copyright work in the course of a business; or

(b) he had in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it had been or was to be used to make infringing copies, order that the infringing copy or article be delivered up to the copyright owner or to such other person as the court may direct.

(2) The court before which proceedings are brought against a person for an offence under section 205 may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control in the course of a business an illicit recording of a performance, order that it be delivered up to a person having performers’ rights or recording rights in relation to the performance or to such other person as the court may direct.

(3) An order may be made by the court on its own motion or on the application of the Public Prosecutor, and may be made whether or not the person was convicted of the offence, but shall not be made –

- (a) after the end of the period specified in section 211; or
- (b) if it appears to the court unlikely that any order will be made under section 212.

(4) A person to whom an infringing copy or other article, or an illicit recording (as the case may be), is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 212.

(5) Nothing in this section affects any other power of the court relating to forfeiture in criminal proceedings.

**Search warrants.** [S 92/2013]

**210.** (1) Where a magistrate is satisfied by information given by a police officer that there are reasonable grounds for believing that –

- (a) an offence against section 204 or 205 has been or is about to be committed in any place; and
- (b) evidence that such an offence has been or is about to be committed in any place,

he may issue a warrant authorising a police officer to –

- (i) enter and search that place, using such reasonable force as is necessary;
- (ii) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect; and
- (iii) detain every person found in the place until the place has been searched.

- (2) A warrant under subsection (1) –
- (a) may authorise persons to accompany the police officer executing the warrant; and
  - (b) remains in force for 28 days from the date of its issue.

(3) In executing a warrant issued under this section, the police officer may seize any article if he reasonably believes that it is evidence that an offence against section 204 or 205 has been or is about to be committed.

*[S 92/2013]*

(4) In this section, “police officer” means a police officer not below the rank of an Inspector or a police officer in charge of a police station.

*[S 92/2013]*

**Entry without warrant.** *[S 92/2013]*

**210A.** If a police officer is satisfied upon information received that he has reasonable grounds for believing that by reason of delay in obtaining a search warrant, any article, vehicle, book, document, copy or contrivance used to commit or to be used to commit an offence against this Order is likely to be removed or destroyed, he may enter any premises without a warrant and seize any such article, vehicle, book, document, copy or contrivance from therein.

*[S 92/2013]*

**Arrest without warrant.** *[S 92/2013]*

**210B.** Any police officer may arrest without a warrant any person who, in any public place –

- (a) sells, exposes or offers for sale; or
- (b) has, or is reasonably suspected of having, in his possession for the purpose of selling or letting for hire,

any infringing copy of any work and may seize any infringing copy of any work.

**Stop, search and board vehicles.** [S 92/2013]

- 210C.** (1) Any officer may, without a warrant issued under section 210(1) –
- (a) stop, search and forcibly board any vehicle in which he reasonably suspects that there is any infringing copy of any work; and
  - (b) seize, remove or detain any such infringing copy and anything which appears to him to be or to contain, or likely to be or to contain, evidence of an offence against this Order.
- (2) In this section, “officer” means –
- (a) a police officer;
  - (b) an officer of customs as defined in the Customs Order, 2006 (S 39/2006); or
  - (c) any officer or class or description of officers appointed by the Minister, by notification published in the *Gazette*, to exercise the powers and perform the duties conferred and imposed on an authorised officer by this section.

[S 92/2013]

**Access to computerised or digitalised data.** [S 92/2013]

- 210D.** (1) Any police officer shall, in the exercise of his powers under section 210A, if it is necessary, be given access to computerised or digitalised data whether stored in a computer or any other medium.
- (2) For the purpose of this section, “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of the computerised data.

[S 92/2013]



**List of things seized.** [S 92/2013]

**210E.** The police officer seizing any infringing copy of a work under this Part shall prepare a list of the things seized and forthwith deliver a copy signed by him to the occupier, or his agents or employees present in the premises.

**Sealing of things.** [S 92/2013]

**210F.** If it appears to the officer that it is not practical to remove from where they are found, any thing or document seized by him in the exercise of his powers under this Order, by reason of their nature, size or amount, he may by any means seal such things or documents in the premises or container in which they are found and it shall be an offence for any person without lawful authority to break, tamper with or damage such seal or remove such things or documents or to attempt to do so.

**Obstruction.** [S 92/2013]

**210G.** Any person who –

(a) refuses any officer access to any vessel, aircraft, vehicle or place which the officer is entitled under this Part; or

(b) obstructs or hinders any officer in the execution of any power conferred upon that officer by this Part,

is guilty of an offence and liable on conviction to a fine not exceeding \$15,000, imprisonment for a term not exceeding 12 months or both.

[S 92/2013]

**Evidence of *agent provocateur* admissible.** [S 92/2013]

**210H.** (1) Notwithstanding any written law or rule of law to the contrary, no *agent provocateur* shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Order, if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

(2) Notwithstanding any written law or rule of law to the contrary, any statement, whether oral or in writing made to the *agent provocateur* by any person who subsequently is charged with an offence against this Order shall be admissible as evidence at his trial.

[S 92/2013]

**Tipping off.** [S 92/2013]

**210I.** (1) Any person who –

(a) knows or has reason to suspect that an officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Order and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or

(b) knows or has reason to suspect that a disclosure has been made to the officer under this Order and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

is guilty of an offence.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter –

(a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

[S 92/2013]

**Protection of informers.** [S 92/2013]

**210J.** (1) Except as hereinafter provided, no complaint as to an offence under this Order shall be admitted in evidence in any civil or criminal proceedings, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding contain any entry in which any informer is named or described or which might lead his discovery, the court before which the proceeding is had shall cause all such passage to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery, but no further.

[S 92/2013]

(3) If in any proceedings relating to an offence under this Order, the court, after full inquiry into the case –

(a) is of the opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true;  
or

(b) is of opinion that justice cannot be fully done between the parties thereto without the discovery of the informer,

the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

[S 92/2013]

**Forfeiture.** [S 92/2013]

**210K.** (1) Any infringing copy of a work seized pursuant to this Order, shall be deemed to be forfeited at the expiration of one calendar month from the date of seizure, unless a claim thereto is made before that date in the manner set out in this section.

(2) Any person asserting that he is the owner of any seized infringing copy of a work and that the same are not liable to forfeiture may personally or by his agent authorised in writing give written notice to the Commissioner of Police of his claim.

[S 92/2013]

(3) On receipt of such notice, the Commissioner of Police may, subject to any direction of the Public Prosecutor –

(a) direct that such infringing copy of a work be released or forfeited;

(b) refer the matter to a court for decision.

[S 92/2013]

(4) The court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the infringing copy of a work and the person from whom they were seized to appear before it and upon his appearance or default to appear, due service of the summons being proved, the court shall proceed to the examination of the matter and if satisfied on the balance of probabilities that an offence has been committed and that such infringing copy of a work was the subject matter or was used in the commission of such offence, shall order the same to be forfeited, or if it is not so satisfied, order the release of the same infringing copy of a work to the person entitled to it.

[S 92/2013]

(5) Any infringing copy of a work forfeited or deemed to be forfeited shall be delivered to the Commissioner of Police who shall dispose of it in a manner he thinks fit or may deliver it up to the first owner of copyright in question, his assignee or exclusive licensee, as the case may be.

[S 92/2013]

**Proportional examination of articles seized to be accepted.** [S 92/2013]

**210I.** (1) Where packages or receptacles containing copies suspected to be infringing copies or otherwise liable to seizure have been seized, it shall be sufficient only to open and examine one *per cent* or any five copies, whichever is lesser, of the contents of each package or receptacle seized.

(2) The court shall presume that the remaining copies contained in the package or the receptacle, are of the same nature as those copies examined.

[S 92/2013]

**Claim to copyright.** [S 92/2013]

**210M.** (1) An affidavit or statutory declaration made before any person having authority to administer an oath under section 380 of the Criminal Procedure Code (Chapter 7), by or on behalf of any person claiming to be –

(a) the owner of the copyright in any works eligible for copyright under this Order stating that –

(i) at the time specified therein copyright subsisted in such work;

(ii) he or the person named therein is the owner of the copyright; and  
(iii) a copy of the work annexed thereto is the true copy thereof; or  
(b) the performer in a live performance eligible for the right copyright under this Order stating that –

- (i) at the time specified therein his right to copyright subsisted in such live performance;  
(ii) he or the person named therein is the performer; and  
(iii) a copy of the document annexed thereto is the document which proves that he or the person named therein performed in the live performance,

shall be admissible in evidence in any proceedings under this Order and shall be *prima facie* evidence of the facts contained therein.

(2) Any person who is authorised to act on behalf of the owner of the copyright or performer for the purposes of subsection (1) shall be required to produce such authorisation in writing.

[S 92/2013]

### **Supplementary provisions with respect to delivery up and seizure**

#### **Period after which remedy of delivery up not available.**

**211.** (1) Subject to this section, an application for an order under sections 101 or 199 may not be made after the end of the period of six years from the date on which the infringing copy or article, or the illicit recording (as the case may be) was made.

(2) If, during the whole or part of that period, the copyright owner or (as the case may be) a person entitled to apply for an order –

- (a) was under a disability; or  
(b) was prevented by fraud or concealment from discovering the facts entitling him to apply,

an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under that disability or, as the case may be, could with reasonable diligence have discovered those facts.

(3) In subsection (2), “disability” has the same meaning as in subsection (2) of section 4 of the Limitation Act (Chapter 14).

[S 92/2013]

(4) An order under section 209 shall not, in any case, be made after the end of the period of six years from the date on which the infringing copy or article, or the illicit recording (as the case may be), was made.

**Order as to disposal of infringing copy, etc., or illicit recording.**

**212.** (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 sections 101 or 209, or seized and detained in pursuance of the right conferred by section 102, 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) An application may be made to the court for an order that an illicit recording of a performance delivered up in pursuance of an order under sections 199 or 209, or seized and detained in pursuance of the right conferred by section 200, shall be –

- (a) forfeited to such person having performer’s rights or recording rights in relation to the performance as the court may direct; or
- (b) destroyed or otherwise dealt with as the court may think fit,

or for a decision that no such order should be made.

(3) In considering what order (if any) should be made under this section, the court shall consider whether other remedies available in an action for infringement of copyright, or of the rights conferred by Part II, would be adequate to compensate the copyright owner, or the person or persons entitled to the rights (as the case may be), and to protect their interests.

(4) The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules of court relating to the service of notice on persons having an interest in the copy or other articles, or in the recording (as the case may be), and any such person is entitled –

(a) to appear in proceedings for an order under this section, whether or not he was served with notice; and

(b) to appeal against any order made, whether or not he appeared, and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal has been given, until the final determination or abandonment of the proceedings on the appeal.

(5) Where there is more than one person interested in a copy or other article, or in a recording (as the case may be), the court shall make such order as it thinks just and may direct that the article or recording be sold, or otherwise dealt with, and the proceeds divided.

(6) If the court decides that no order should be made under this section, the person in whose possession, custody or control the copy or other article, or the recording, was before being delivered up or seized is entitled to its return.

(7) References in this section to a person having an interest in a copy or other article, or in a recording, include any person in whose favour an order could be made in respect of it under this section or under section 21 of the Emergency (Trade Marks) Order, 1999.

## **General**

### **Regulations.**

**213.** (1) The Attorney General may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prescribing all matters which are required or convenient to be prescribed, including the prescription of fees, and generally for giving effect to the objects and purposes of this Order and for the due administration thereof.

(2) Such regulations may make different provision as respects different classes of case to which they apply, and may include such incidental, consequential and supplementary provisions as the Attorney General considers necessary or expedient.

**Enabling powers.**

**214.** (1) His Majesty the Sultan and Yang Di-Pertuan may by order make such provisions as appear to him to be necessary or expedient –

(a) for giving effect to the objects and purposes of this Order; and

(b) for the purpose of bringing any other written law into accord with this Order or with any order made thereunder.

**First Schedule.**

(2) The Chief Justice may give such directions in either a particular proceeding, in proceedings in any court of a specified class or description, or generally, as he may consider necessary or expedient to meet any difficulty arising from the construction of the First Schedule.

**First Schedule.**

(3) The Attorney General may give such directions in either a particular proceeding before the Copyright Tribunal, in proceedings before it of a specified class or description, or generally, as he may consider necessary or expedient to meet any difficulty arising from the construction of the First Schedule.

**Public Prosecutor's fiat.** [S 92/2013]

**214A.** (1) Notwithstanding any provision in the Criminal Procedure Code (Chapter 7), the Public Prosecutor may by *fiat*, and subject to such conditions as he thinks fit, permit any person to prosecute, on the person's own behalf, any particular offence punishable under this Order, or to pursue any further proceedings in such prosecution.

(2) The person to whom the *fiat* is granted under subsection (1) may either appear in person or by an advocate.

[S 92/2013]



**Order binding on Government.**

**215.** This Order is binding on the Government.

**Jurisdiction of Court of a Magistrate.** [S 92/2013]

**216.** Notwithstanding the provisions of any written law the contrary, a Court of a Magistrate shall have jurisdiction to try any offence under sections 203(2), 204 and 205 and to award the full punishment for any such offence.

**FIRST SCHEDULE**

(section 174)

**COPYRIGHT: TRANSITIONAL PROVISIONS AND SAVINGS**

**Introductory**

**1.** In relation to any law relating to copyright in force immediately before commencement –

(a) references in this Schedule to copyright in a sound recording are to any copyright under any such law in records embodying that recording;

(b) references in this Schedule to copyright in a film are to any copyright under any such law in that film (so far as it constituted a dramatic work for the purpose of any such law) or in photographs forming part of that film.

### **General principles: continuity of the law**

2. This Order applies 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.

3. (1) This paragraph has effect for securing the continuity of the law so far as this Order re-enacts (whether with or without modification) the provisions of any law relating to copyright in force immediately before commencement.

(2) A reference in any law relating to copyright in force immediately before commencement, or in any document, to copyright, or to a work or other subject-matter in which copyright subsists, which apart from this Order would be construed as referring to copyright under any such law shall be construed, as far as may be required for continuing its effect, as being, or as the case may require, including, a reference to copyright under this Order or to works in which copyright subsists under this Order.

(3) Anything done, including any subsidiary legislation made, or having effect as done, under or for the purpose of any law relating to copyright in force immediately before commencement has effect as if done under or for the purpose of the corresponding provision of this Order.

(4) A reference, whether express or implied, in this Order or in any other law, or in any document, to a provision of this Order shall, so far as the context permits, be construed as including, in relation to times, circumstances and purposes before commencement, a reference to any corresponding provision of any law relating to copyright in force immediately before commencement.

(5) A reference, whether express or implied, in any law, or in any document, to a provision of any law relating to copyright in force immediately before commencement shall be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of this Order.

(6) This paragraph has effect subject to any specific transitional provision or saving made by this Order.

### **Subsistence of copyright**

**4.** (1) Copyright subsists in an existing work after commencement only if copyright subsisted in it immediately before commencement.

(2) Sub-paragraph (1) does not prevent an existing work qualifying for copyright protection after commencement under section 164.

**5.** (1) Copyright shall not subsist under this Order in an artistic work made before such date as the Attorney General may by order determine, which at the time when it was made constituted a design capable of registration under any law relating to the registration of designs, and was used, or intended to be used, as a model or pattern to be multiplied by an industrial process.

(2) For this purpose, a design shall be deemed to be used as a model or pattern to be multiplied by an industrial process –

(a) when it is reproduced or is intended to be reproduced on more than fifty 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; or

(b) when it 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.

(3) In sub-paragraph (2), “set of articles” means a number of articles of the same general character ordinarily on sale or intended to be used together, to each of which the same design, or the same design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, is applied.

6. (1) No copyright subsists in a film, as such, made before such date as the Attorney General may by order determine.

(2) Where a film made before that date was an original dramatic work, this Order has effect in relation to the film as if it was an original dramatic work within the meaning of Part I.

(3) This Order has effect in relation to photographs forming part of a film made before the date determined by the Attorney General under sub-paragraph (1) as they have effect in relation to photographs not forming part of a film.

7. A film sound-track, other than one embodied in a record not being a record derived directly or indirectly from the sound-track, shall be treated for the purposes of this Order not as part of the film, but as a sound recording; but –

(a) copyright subsists in the sound recording only if copyright subsisted in the film immediately before commencement, and it continues to subsist until copyright in the film expires;

(b) the author and first owner of copyright in the film shall be treated as having been author and first owner of the copyright in the sound recording; and

(c) anything done before commencement under or in relation to the copyright in the film continues to have effect in relation to the sound recording as in relation to the film.

**8.** No copyright subsists in –

(a) a broadcast made before the date determined by the Attorney General under sub-paragraph (1) of paragraph 6; or

(b) a cable programme included in a cable programme service before such date as the Attorney General may by order determine,

and any such broadcast or cable programme shall be disregarded for the purpose of subsection (2) of section 16.

### **Authorship of work**

**9.** The question who was the author of an existing work shall be determined in accordance with this Order for the purpose of the rights conferred by Chapter IV of Part I, and for all other purposes shall be determined in accordance with any law in force at the time the work was made.

### **First ownership of copyright**

**10.** (1) The question who was the first owner of copyright in an existing work shall be determined in accordance with any law in force at the time the work was made.

(2) Where before commencement a person commissioned the making of a work in such circumstances as the Attorney General may by order determine, those provisions apply to determine first ownership of copyright in any work made under any such commission after commencement.

### **Duration of copyright in existing works**

**11.** (1) This paragraph has effect with respect to the duration of copyright in existing works. The question which provision applies to a work shall be determined by reference to the facts immediately before commencement.

(2) Subject to sub-paragraphs (3) to (6), any copyright in such description of work or class of work as the Attorney General may by order determine continues to subsist until the date on which it would have expired under any law relating to copyright in force immediately before commencement.

(3) Any copyright in anonymous or pseudonymous literary, dramatic, musical or artistic works, other than photographs, continues to subsist –

(a) if the work has been published, until the date on which it would have expired in accordance with any law relating to copyright in force immediately before commencement;

(b) if the work has not been published, until the end of the period of fifty years from the end of the year of commencement or, if during that period the work was first made available to the public within the meaning of subsection (2) of section 14, the date on which copyright expires in accordance therewith,

unless, in any case, the identity of the author becomes known before that date, in which case subsection (1) of section 14 applies.

(4) Any copyright in such descriptions of work or class of work as the Attorney General may by order determine continues to subsist until the end of the period of fifty years from the end of the year of commencement, except that in the case of such sound recordings or films or class of sound recordings or films as the Attorney General may by order determine published before the end of that period any copyright shall continue until the end of the period of fifty years from the end of the year in which they were published.

(5) Any copyright in any other description of existing work continues to subsist until the day on which copyright in that description of work expires in accordance with sections 14 to 17.

(6) This paragraph does not apply to works subject to Government copyright or Legislative Council copyright.

### **Acts infringing copyright**

**12.** (1) Chapters II and III of Part I as to the acts constituting an infringement of copyright apply only to acts done after commencement. Any law relating to copyright in force immediately before commencement continues to apply to acts done before commencement.

(2) So much of subsection (2) of section 20 as extends the restricted act of issuing copies to the public to include the rental to the public of copies of sound recordings, films or computer programs does not apply 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 purpose of section 31, the question whether the making of an article constituted an infringement of copyright, or would have done if the article had been made in Brunei Darussalam, shall be determined in such manner as the Attorney General may by order determine.

(4) For the purpose of the application of paragraph (a) of subsection (1) of section 35, paragraph (b) of subsection (1) of section 55 and paragraph (d) of subsection (2) of section 66 to things made before commencement, it shall be assumed that this Order was in force at all material times.

(5) Section 59 applies where articles have been marketed as mentioned in subsection (1) of that section before commencement, with the substitution for the period mentioned in subsection (2) of that section of the period of twenty-five years from the end of the year of commencement.

(6) Section 60 does not apply to a copy purchased before commencement.

(7) In section 69, the reference to the owner of the copyright in drawings or plans is, in relation to buildings constructed before commencement, to the person who at the time of the construction was the owner of any copyright in such drawings or plans on such date as the Attorney General may by order determine.

**13.** (1) Section 61 has effect in relation to existing works, subject to sub-paragraphs (2) and (3).

(2) Sub-paragraph (i) of paragraph (b) of subsection (1) of that section does not apply to photographs.

(3) Sub-paragraph (ii) of paragraph (b) of subsection (1) of that section applies only –

(a) where sub-paragraph (3)(b) of paragraph 11 of this Schedule applies, after the end of the period of fifty years from the end of the year of commencement; or

(b) where sub-paragraph (5) of paragraph 11 of this Schedule applies.

[S 92/2013]

**14.** Where in the case of a dramatic or musical work made before such date as the Attorney General may by order determine, any right conferred by any law relating to copyright in force immediately before commencement did not include the sole right to perform the work in public, the acts restricted by the copyright shall be treated as not including –

(a) the performing of the work in public;

(b) the broadcasting of the work or its inclusion in a cable programme service; and

(c) the doing of any of the acts mentioned in paragraphs (a) or (b) in relation to an adaptation of the work,

and where any such right conferred by any such law 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.



**15.** Where a work made before such date as the Attorney General may by order determine 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, any copyright is subject to any right of publishing the essay, article or portion in a separate form to which the author was entitled at that date.

[S 92/2013]

### **Designs**

**16.** (1) Section 55 does not apply for ten years after commencement to a design recorded or embodied in a design document or model before commencement.

(2) In respect of the period of ten years referred to in sub-paragraph (1), the Attorney General may by order make such provisions as he may consider necessary or expedient to apply to any relevant copyright any provisions relating to design right.

(3) Section 102 does not apply during the period of ten years referred to in sub-paragraph (1) in relation to anything to which it would not apply if the design had been first recorded or embodied in a design document or model after commencement.

(4) Nothing in this paragraph affects the operation of any law preventing or restricting the enforcement of copyright in relation to a design.

**17.** (1) If, in relation to any artistic work, any provision of any law relating to copyright in force at commencement applied at any time before commencement as to the effect of the industrial application of a design corresponding to artistic work, subsection (2) of section 56 applies with the substitution of fifteen years for any period mentioned in any such law.

(2) Except as provided in sub-paragraph (1), section 56 applies only where articles are marketed as mentioned in paragraph (b) of subsection (1) of that section after commencement.

### **Moral rights**

- 18.** No act done before commencement is actionable under Chapter IV of Part I.
- 19.** (1) This paragraph has effect with respect to the rights conferred by sections 80 and 83.
- (2) Those rights do not apply –
- (a) to a literary, dramatic, musical or artistic work of which the author died before commencement; and
- (b) to a film made before commencement.
- (3) Those rights, in relation to an existing literary, dramatic, musical and artistic work, do not apply –
- (a) where copyright first vested in the author, to anything which under an assignment made or licence granted before commencement may be done without infringing copyright;
- (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.
- 20.** The right conferred by section 88 does not apply to photographs taken and films made before commencement.

### **Assignments and licences**

- 21.** (1) Any document made or event occurring before commencement which had any operation –
- (a) affecting the ownership of the copyright in an existing work; or
- (b) creating, transferring or terminating an interest, right or licence in respect of the copyright in an existing work,
- has the corresponding operation in relation to copyright in the work under this Order:

Provided that if the operation of any such document was or would have been limited to a period therein specified, it shall not have any operation in relation to the copyright under this Order, except in so far as that period extends beyond commencement.

(2) Expressions used in any such document shall be construed in accordance with their effect immediately before commencement.

**22.** (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) between such dates as the Attorney General may by order determine shall operate to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author.

(2) The reversionary interest in the copyright expectant on the termination of that period may after commencement be assigned by the author during his life but in the absence of any assignment shall, on his death, devolve on his personal representative as part of his estate.

(3) Nothing in this paragraph affects –

(a) an assignment of the reversionary interest by a person to whom it had been assigned;

(b) an assignment of the reversionary interest after the death of the author by his personal representative or any person becoming entitled to it; and

(c) an assignment of the copyright after the reversionary interest has fallen in.

(4) Nothing in this paragraph applies to the assignment of the copyright in a collective work, or a licence to publish a work or part of a work as part of a collective work. In this sub-paragraph, “collective work” means –

(a) an encyclopaedia, dictionary, yearbook or similar work;

(b) a newspaper, review, magazine, or similar periodical; and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

23. Subsection (2) of section 95 does not apply to an exclusive licence granted before commencement.

### **Bequests**

24. (1) Section 96 –

(a) does not apply where the testator died before such date as the Attorney General may by order determine;

(b) where the testator died on or after that date and before commencement, applies only in relation to an original document embodying a work.

(2) In the case of an author who died before the date determined by the Attorney General under sub-paragraph (a) of paragraph (1), the ownership after his death of a manuscript of his, where such ownership has been acquired under his will and the manuscript is of a work which has not been published or performed in public, is *prima facie* proof of the copyright being with the owner of the manuscript.

### **Remedies for infringement**

25. (1) Sections 99 and 100 apply only to an infringement of copyright committed after commencement. The corresponding provisions of any law relating to copyright in force immediately before commencement continue to apply to any infringement committed before commencement.

(2) Sections 101 and 102 apply to infringing copies and other articles made before or after commencement. The corresponding provisions of any law relating to copyright in force immediately before commencement do not apply after commencement, except for the purpose of proceedings begun before commencement.

(3) Sections 103 and 104 apply where sections 99 to 102 apply. The corresponding provisions of any law relating to copyright in force immediately before commencement continue to apply where the corresponding provisions mentioned in sub-paragraphs (1) or (2) apply.

(4) Sections 106 to 108 apply only in proceedings brought under this Order. The corresponding provisions of any law relating to copyright in force immediately before commencement continue to apply in proceedings brought under any such law.

**26.** Sections 103 and 104 do not apply to a licence granted before such date as the Attorney General may by order determine.

**27.** (1) Section 204 applies only to acts done after commencement. The corresponding provisions of any law relating to copyright in force immediately before commencement continue to apply to acts done before commencement.

(2) Section 210 applies to offences committed before commencement in relation to which such provisions of any law relating to copyright in force immediately before commencement as the Attorney General may by order determine applied. Any such provisions so determined continue to apply to any warrant issued before commencement.

### **Qualification for copyright protection**

**28.** Every work in which copyright subsisted under any law relating to copyright in force immediately before commencement shall be deemed to satisfy the requirements of Part I as to qualification for copyright protection.

### **Continental shelf**

**29.** Paragraph (a) of subsection (3) of section 1 does not apply to anything done before commencement.

## **Brunei Darussalam ships, aircraft and hovercraft**

**30.** Paragraphs *(b)* and *(c)* of subsection (3) of section 1 do not apply to anything done before commencement.

### **Government copyright**

**31.** (1) Section 167 applies to an existing work prepared or published by or under the direction or control of His Majesty the Sultan and Yang Di-Pertuan or any department of Government if –

- (a)* any law relating to copyright applied to it immediately before commencement; and
- (b)* it is not one to which sections 168, 169 or 170 apply.

(2) Paragraph *(b)* of subsection (1) of section 167 has effect subject to any agreement entered into under any such law before commencement.

**32.** (1) This paragraph has effect with respect to the duration of copyright in existing works, prepared or published by or under the direction or control of His Majesty the Sultan and Yang Di-Pertuan or any department of Government, to which section 167 applies. The question which provision applies to a work shall be determined by reference to the facts immediately before commencement.

(2) Copyright in –

- (a)* published literary, dramatic and musical works;
- (b)* artistic works, other than engravings and photographs;
- (c)* published engravings;
- (d)* published photographs, and photographs taken before such date as the Attorney General may determine;
- (e)* published sound recordings, and sound recordings made before such date as the Attorney General may determine; and
- (f)* published films,

continues to subsist until the date on which it would have expired in accordance with any law relating to copyright in force immediately before commencement.

(3) Copyright in unpublished literary, dramatic and musical works continues to subsist until –

- (a) the date on which it expires under subsection (3) of section 167; or
- (b) the end of the period of fifty years from the end of the year of commencement,

whichever is the later.

(4) Copyright in –

- (a) unpublished engravings; and
- (b) unpublished photographs taken on or after such date as the Attorney General may determine,

continues to subsist until the end of the period of fifty years from the end of the year of commencement.

(5) Copyright in a film or sound recording not falling within sub-paragraph (2) continues to subsist until the end of the period of fifty years from the end of the year of commencement, unless the film or recording was published before the end of that period, in which case it expires fifty years from the end of the year in which it was published.

**33.** Section 168 applies to Acts of the Legislative Council enacted before commencement, and to Orders under subsection (3) of section 83 of the Constitution made before commencement.

### **Legislative Council copyright**

**34.** (1) Section 169 applies to existing unpublished literary, dramatic, musical or artistic works, but does not otherwise apply to existing works.

- (2) Section 170 does not apply –
- (a) to a public Bill which was introduced into the Legislative Council and published before commencement;
  - (b) to a private Bill of which a copy was deposited in the Legislative Council before commencement; and
  - (c) to a personal Bill which was given a First Reading in the Legislative Council before commencement.

### **Copyright vesting in certain international organisations**

**35.** (1) Any work in which immediately before commencement any copyright subsisted under any law relating to copyright in force at that time shall be deemed to satisfy the requirements of subsection (1) of section 172. Otherwise, section 172 does not apply to any works made or, as the case may be, published before commencement.

(2) Any copyright in any such work which is unpublished continues to subsist until the date on which it would have expired in accordance with any law relating to copyright in force immediately before commencement, or at the end of the period of fifty years from the end of the year of commencement, whichever is the earlier.

### **Meaning of “publication”**

**36.** Subsection (3) of section 178 applies only where the construction of the building began after commencement.

### **Meaning of “unauthorised”**

**37.** For the purpose of the application of the definition in subsection (1) of section 2 of the word “unauthorised” to things done before commencement –



(a) paragraph (a) applies to things done before such date as the Attorney General may by order determine as if the reference to the licence of the copyright owner were a reference to his consent or acquiescence;

(b) paragraph (b) applies with the substitution of “or any person lawfully claiming under him” for “or, in a case where subsection (2) of section 13 would have applied, the author’s employer or, in either case, any person lawfully claiming under him”;

(c) paragraph (c) shall be disregarded.

## **SECOND SCHEDULE**

(section 193)

### **RIGHTS IN PERFORMANCES: PERMITTED ACTS**

#### **Introductory**

1. (1) This Schedule specifies acts which may be done in relation to a performance or recording notwithstanding the rights conferred by Part II; it relates only to the question of infringement of those rights and does not affect any other right or obligation restricting the doing of any of the specified acts.

(2) No inference shall be drawn from the description of any act which may under this Schedule be done without infringing the rights conferred by Part II as to the scope of those rights.

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

### **Criticism, reviews and news reporting**

2. Fair dealing with a performance or recording –
- (a) for the purpose of criticism or review, of that or another performance or recording, or of a work; or
  - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by Part II.

### **Incidental inclusion of performance or recording**

3. (1) The rights conferred by Part II are not infringed by the incidental inclusion of a performance or recording in a sound recording, film, broadcast or cable programme.
- (2) Nor are those rights infringed by anything done in relation to copies, or to the playing, showing, broadcasting or inclusion in a cable programme service, of anything whose making was, under sub-paragraph (1), not an infringement of those rights.
- (3) A performance or recording so far as it consists of music, or words spoken or sung with music, shall not be regarded as incidentally included in a sound recording, broadcast or cable programme if it is deliberately included.

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

4. (1) The rights conferred by Part II are not infringed by the copying of a recording of a performance in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving the instruction.
- (2) The rights conferred by Part II are not infringed –
- (a) by the copying of a recording of a performance for the purpose of setting or answering the questions in an examination; or

(b) by anything done for the purpose of an examination by way of communicating the questions to the candidates.

(3) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purpose of that dealing, and if that dealing infringes any right conferred by Part II shall be so treated for all subsequent purposes. In this sub-paragraph, “dealt with” means sold, let for hire, or offered or exposed for sale or hire.

**Playing or showing sound recording, film, broadcast or cable programme  
in course of activities of educational establishments**

5. (1) The playing or showing of a sound recording, film, broadcast or cable programme at an educational establishment for the purpose of instruction before an audience consisting of teachers and students at the establishment and other persons directly connected with its activities is not a playing or showing of a performance in public for the purpose of infringement of the rights conferred by Part II.

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

(3) Any order made under subsection (2) of section 177 with respect to the application of that section also applies for the purpose of this paragraph.

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

6. (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 its educational purposes without thereby infringing any of the rights conferred by Part II in relation to any performance or recording included in it.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purpose of that dealing, and if that dealing infringes any right conferred by Part II shall be so treated for all subsequent purposes. In this sub-paragraph, “dealt with” means sold, let for hire, or offered or exposed for sale or hire.

(3) Any order made under subsection (2) of section 177 with respect to the application of that section also applies for the purpose of this paragraph.

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

7. If an article of cultural or historical importance or interest cannot lawfully be exported unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of any right conferred by Part II to make that copy.

### **Legislative Council and judicial proceedings**

8. The rights conferred by Part II are not infringed by anything done for the purpose of proceedings of the Legislative Council or of judicial proceedings, or for the purpose of reporting any such proceedings.

### **Royal Commissions and statutory inquiries**

9. The rights conferred by Part II are not infringed by anything done for the purpose of the proceedings of a Royal Commission or of a statutory inquiry, or for the purpose of reporting any such proceedings held in public.

### **Public archives and public records**

**10.** Material which is comprised in public archives or public records within the meaning of the Brunei National Archives Act which is available to the public under that Act may be copied, and a copy may be supplied to any person, by or with the authority of the Director appointed under subsection (1) of section 4 of that Act, without infringing any right conferred by Part II.

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

**11.** (1) Where the doing of a particular act is specifically authorised by any written law, whenever it commenced, then, unless that written law provides otherwise, the doing of that act does not infringe the rights conferred by Part II.

(2) Nothing in this paragraph shall be construed as excluding any defence of statutory authority otherwise available under any written law.

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

**12.** (1) This paragraph applies where a recording of a performance in electronic form has been sold on terms which, expressly or impliedly or by virtue of any law, allow the purchaser to make further recordings in connection with his use of the recording.

(2) If there are no express terms –

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

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

anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by Part II; but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.

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

(4) On a subsequent transfer this paragraph applies, with the substitution for references in sub-paragraph (2) to the purchaser by references to the subsequent transferor.

(5) This paragraph does not apply to a recording sold before commencement.

### **Use of recordings of spoken works in certain cases**

**13.** (1) Where a recording of the reading or recitation of a literary work is made for the purpose –

- (a) of reporting current events; or
- (b) of broadcasting or including in a cable programme service the whole or part of the reading or recitation,

it is not an infringement of the rights conferred by Part II to use the recording, or to copy the recording and use the copy, for that purpose, provided the conditions in sub-paragraph (2) are met.

(2) The conditions are that –

- (a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme;
- (b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;
- (c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and
- (d) the use is by or with the authority of a person who is lawfully in possession of the recording.

### **Recordings of folksongs**

**14.** (1) A recording of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body without infringing any of the rights conferred by Part II, provided the conditions in sub-paragraph (2) are met.

(2) The conditions are that –

(a) the words were unpublished and of unknown authorship at the time the recording was made;

(b) the making of the recording did not infringe any copyright; and

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

(3) Copies of a recording made in reliance on sub-paragraph (1) and included in an archive maintained by a designated body may, provided the conditions in sub-paragraph (2) are met, be made and supplied by the archivist or a person acting on his behalf without infringing any of the rights conferred by Part II.

(4) In this paragraph, “designated body” means a body designated for the purpose of section 65.

### **Playing of sound recordings for purposes of club, society, etc.**

**15** (1) It is not an infringement of any right conferred by Part II to play a sound recording as part of the activities of, or for the benefit of, a club, society or other similar organisation, provided the conditions in sub-paragraph (2) are met.

(2) The conditions are that –

(a) the organisation is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and

(b) the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation.

### **Incidental recording for purpose of broadcast or cable programme**

**16.** (1) A person who proposes to broadcast a recording of a performance, or include a recording of a performance in a cable programme service, in circumstances not infringing the rights conferred by Part II, shall be treated as having consent for the purposes of that Part for the making of a further recording for the purposes of the broadcast or cable programme.

(2) That consent is subject to the condition that the further recording –

(a) will not be used for any other purpose; and

(b) will be destroyed within twenty-eight days of being first used for broadcasting the performance or including it in a cable programme service.

(3) A recording made in accordance with this paragraph shall be treated as an illicit recording –

(a) for the purpose of any use in breach of the condition mentioned in subparagraph (2)(a);

(b) for all purposes, after that condition, or the condition mentioned in subparagraph (2)(b), has been broken.

### **Recordings, for purpose of supervision and control, of broadcasts and cable programmes**

**17.** The rights conferred by Part II are not infringed by the making or use by the Government, for the purpose of maintaining supervision and control over programmes broadcast by it, of recordings of those programmes.



### **Free public showing or playing of broadcast or cable programme**

**18.** (1) The showing or playing in public of a broadcast or cable programme to an audience that has not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any right conferred by Part II in relation to a performance or recording included in –

(a) the broadcast or cable programme; or

(b) any sound recording or film which is played or shown in public by reception of the broadcast or cable programme.

(2) The audience shall be treated as having paid for admission to a place –

(a) if it has 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 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 that place;

(b) persons admitted as members of a club, society or other similar organisation where the payment is only for membership thereof and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to its main purposes.

(4) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the rights conferred by Part II in relation to a performance or recording, the fact that it was heard or seen in public by the reception of the broadcast or programme shall be taken into account in assessing the damages for that infringement.

- (5) Expressions used in this paragraph have the same meaning as in section 75.

### **Reception and re-transmission of broadcasts in cable programme service**

**19.** (1) This paragraph applies where a broadcast made from Brunei Darussalam is, by reception and immediate re-transmission, included in a cable programme service.

(2) The rights conferred by Part II in relation to a performance or recording included in the broadcast are not infringed if and to the extent that the broadcast was 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 those rights, 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.

### **Provision of sub-titled copies of broadcast or cable programme**

**20.** (1) A designated body may, for the purpose of providing persons who are physically or mentally handicapped in any way, with copies which are sub-titled or otherwise modified for their special needs, make recordings of television broadcasts or cable programmes without infringing any right conferred by Part II in relation to a performance or recording included in the broadcast or cable programme.

(2) In this paragraph, “designated body” means a body designated for the purpose of section 77.

### **Recording of broadcast or cable programme for archival purposes**

**21.** (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 right conferred by Part II in relation to a performance or recording included in the broadcast or cable programme.

(2) In this paragraph, “designated class” and “designated body” means a class or body designated for the purpose of section 78.

Made this 10th. day of Ramadan, 1420 Hijriah corresponding to the 18th. day of December, 1999 at Our Istana Nurul Iman, Bandar Seri Begawan.

**HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN,  
BRUNEI DARUSSALAM.**