

THE COPYRIGHT ACT

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SCHEDULES.

THE COPYRIGHT ACT

[1st September, 1993.]

Acts
4 of 1993,
29 of 1999,
13 of 2015.

PART I

Preliminary

1. This Act may be cited as the Copyright Act.

Short title.

2.—(1) In this Act—

Interpretation.

“accessible format”, in relation to a protected work means a version of the work in Braille, large print, electronic format or otherwise modified to provide a person with a disability with improved access to the work;

13/2015
S. 2(a).

“adaptation” means—

(a) in relation to a literary or dramatic work—

(i) a translation of the work which, as respects a computer program, includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code, otherwise than incidentally in the course of running the program;

(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;

(iii) a version of a work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;

- (b) in relation to a musical work, an arrangement or transcription of the work;

“appointed day” means 1st September, 1993;

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

“artistic work” means—

- (a) a graphic work, photograph, sculpture or collage, whether the work is of artistic quality or not;
- (b) a building or a model of a building, whether the building or model is of artistic quality or not; or
- (c) a work of artistic craftsmanship to which neither paragraph (a) nor paragraph (b) applies;

“author” in relation to a work, means the person who creates it, being in relation to—

- (a) a literary or dramatic work, the author of the work;
- (b) a musical work, the composer;
- (c) an artistic work (other than a photograph) the artist;
- (d) a photograph, the person taking the photograph;
- (e) a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken;
- (f) the typographical arrangement of a published edition, the publisher;
- (g) a broadcast, the person making the broadcast as described in section 4(2) or, in the case of a broadcast which relays another broadcast by reception and immediate retransmission, the person making that other broadcast;

- (h) a cable programme, the person providing the cable programme service in which the programme is included;
- (i) a computer-generated literary, dramatic, musical or artistic work, the person by whom the arrangements necessary for the creation of the work are undertaken,

and in relationship to a work of a joint authorship, references in this Act to the author of a work shall, except as otherwise provided, be construed as references to all the authors of the work;

“authorized body” means—

13/2015
S. 2(b).

- (a) the Jamaica Council for Persons with Disabilities;
- (b) the National Library of Jamaica;
- (c) any other body that is so named by the Minister on the recommendation of the Jamaica Intellectual Property Office;

“a broadcast” means a transmission by wireless telegraphy of visual images, sounds or other information which—

- (a) having regard to section 4, is capable of being lawfully received by members of the public; or
- (b) is transmitted for presentation to members of the public;

“to broadcast” means to transmit by wireless telegraphy visual images or sounds, or both, for reception by the public notwithstanding that—

- (a) subsequent to the initial transmission, but before reception by the public, the images or sounds may be carried on a path provided by a material substance;

(b) the public receiving or capable of receiving the images or sounds is in a country other than that from which the original transmission took place; or

(c) no member of the public actually received the images or sounds, provided only that members of the public could, if in possession of suitable apparatus, receive them, and “broadcasting” and “re-broadcasting” have corresponding meanings;

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

“business” includes a trade or profession;

“cable programme” means any item included in a cable programme service, and any reference in this Act—

(a) to the inclusion of a cable programme or work in a cable programme service is a reference to its transmission as part of the service; and

(b) to the person including it is a reference to the person providing the service;

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

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

(b) for presentation to members of the public,

and which is not, or to the extent that it is not, excepted by regulations made under this Act;

“carrier” means a person who is granted a carrier licence pursuant to section 13 of the Telecommunications Act;

“circumvention” in relation to a technological protection

13/2015
S. 2(c).

13/2015
S. 2(c).

measure means—

- (a) the descrambling of a scrambled work;
- (b) the decryption of an encrypted work, or other action to avoid, bypass, remove, deactivate, or impair a technological protection measure without the authority of the copyright owner;

“circumvention device” means a device that—

13/2015
S. 2(c).

- (a) is designed or produced for the purpose of the circumvention of a technological protection measure that effectively controls access to a protected work in respect of which rights are conferred under Part IX; or
- (b) has only a limited commercially significant purpose or use, other than the circumvention of a technological protection measure that effectively controls access to a protected work;

“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;

“computer-generated work” means a work generated by a computer in circumstances such that the work has no human author;

“computer program” means a set of instructions, whether expressed in words or in schematic or other form, which is capable, when incorporated in a machine-readable medium, of causing an electronic or other device having information-processing capabilities to indicate, perform or achieve a particular function, task or result;

“copy” in relation to—

- (a) a work that is a literary, dramatic, musical or artistic work, means a reproduction of the work in any material form and, in respect of an artistic work, includes a reproduction in three-dimensions if the artistic work is a two-dimensional work and a reproduction in two-dimensions if the artistic work is a three-dimensional work;
- (b) a work that is a film, television broadcast or cable programme, includes a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme;
- (c) a work that is a typographical arrangement of a published edition, means a facsimile copy of the arrangement; and
- (d) any description of work, includes a copy of the work that is transient or incidental to some other use of the work,

and references to the copying of a work of any description shall be construed to include a reference to storing the work in any medium by electronic means;

“copyright” means copyright conferred by Part II of this Act;

“Copyright Tribunal” or “Tribunal” means the Tribunal established under section 103;

“country” includes any territory;

“Crown copyright” means copyright owned by the Crown;

“distribution” means the distribution to the public, for commercial purposes, of copies of a work by way of rental, lease, hire, loan or similar arrangement and “distributing” has a corresponding meaning;

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

“educational establishment” means any school, college or other educational body designated by the Minister by order either specifically or by reference to a class, for the purposes of this Act;

“exclusive licence” means a licence in writing signed by or on behalf of the owner of copyright in a work authorizing the licensee, to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the owner of the copyright;

“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 being shown or played in public, sold, let for hire or otherwise commercially exploited;

“Executive Director” means the Executive Director of the Jamaica Intellectual Property Office; 13/2015
S. 2(e).

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

“fixation” means the embodiment of sounds or images or the representations thereof, from which sounds or images or representations can be perceived, reproduced or communicated through a device and “fix” shall be construed accordingly; 13/2015
S. 2(f).

“future copyright” means copyright which will or may come into existence in respect of any future work or class of works or on the occurrence of a future event, and “prospective owner” shall be construed accordingly and, in relation to any such copyright, includes a person prospectively entitled thereto by virtue of such an agreement as is mentioned in section 24;

“graphic work” includes—

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

“illicit recording” in relation to a performance means a recording wherever made, the making of which constitutes an infringement of the rights conferred on the performer or a person having recording rights in relation to the performance pursuant to Part IX, and which does not fall within any of the exceptions specified in or authorized pursuant to any provision of that Part;

“infringing copy” in relation to a protected work means—

- (a) any copy of the work, the making of which is not authorized under or by virtue of any provision of this Act;
- (b) any copy of the work that is or is proposed to be imported into Jamaica and its making in Jamaica would have constituted an infringement of the copyright in the work in question or a breach of an exclusive licence agreement relating to that work;

29/1999
S. 2.

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

- (a) a written table or compilation;
- (b) a computer programme,

and for the purpose of paragraph (a) of this definition, “compilation” means a collection of works, data or other material, whether in machine-readable form or any other form, which constitutes an intellectual creation by reason of the selection or arrangement of the works, data or other material comprised in it;

“manuscript” in relation to a work, means the original document embodying the work whether written by hand or not;

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

“Office” means the Jamaica Intellectual Property Office established under the Jamaica Intellectual Property Office Act; 13/2015
S. 2(g).

“orphan work” means a protected work in relation to which the author or copyright owner has not been identified or located after reasonable efforts to identify or locate the author or copyright owner; 13/2015
S. 2(g).

“performer” means any actor, singer, musician, dancer or other person who acts, sings, depicts, delivers, declaims, plays in, interprets, or otherwise performs, a literary, dramatic, musical or artistic work or an expression of folklore, as the case may be and references to the performer in the context of the person having performer’s rights, shall be construed to include references to the person who, pursuant to any provision of this Act, is for the time being entitled to exercise those rights; 13/2015
S. 2(h).

“performance” in relation to—

(a) the rights conferred under Part IX, means—

- (i) a dramatic performance which includes dance and mime;
- (ii) a musical performance; or
- (iii) a reading or recitation of a literary work;
- (iv) a performance of a variety act or any similar presentation,

that is, or to the extent that it is, a live performance, given by one or more individuals; and

(b) copyright in a literary, dramatic or musical work includes—

- (i) delivery in the case of lectures, addresses, speeches and sermons;
- (ii) any mode of visual acoustic presentation, including presentation by means of a sound recording, film, broadcast or cable programme of the work;

“person having recording rights” in relation to a performance means a person who—

- (a) is a party to, and has the benefit of, an exclusive recording contract to which the performance is subject or to whom the benefit of such a contract has been assigned; and
- (b) is a qualified person,

so, however, that, where a performance is subject to an exclusive recording contract but the person mentioned in paragraph (a) is not a qualified person, the expression shall be deemed to extend to any qualified person who is licensed by the person mentioned in paragraph (a) to make recordings of the performance with a view to their being shown or played in public, sold, let for hire or otherwise commercially exploited or to whom the benefit of such a licence has been assigned;

“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;

“place of public entertainment” includes any premises which are from time to time made available for hire to such persons as may desire to hire them for purposes of public entertainment, including premises

that are occupied mainly for other purposes;

“prospective owner” has the meaning assigned to it in the definition of “future copyright”;

“publication” and “commercial publication” have the meaning assigned to those expressions, respectively, by section 3;

“published edition” in relation to copyright in the typographical arrangement of a published edition, means the published edition of the whole or any part of one or more literary, dramatic, musical or artistic works;

“qualified person”—

(a) in the case of an individual, means a person who is a citizen of, or whose habitual residence is in, Jamaica or a specified country; and

(b) in the case of a body corporate, means a body incorporated or established under any written law of Jamaica or a specified country;

“qualifying performance” means a performance that—

(a) is given by an individual who is a qualified person; or

(b) takes place in Jamaica or a specified country;

“record” means any disc, tape, perforated roll or other device any electronic or other intangible fixation, in which sounds are embodied so as to be capable of being reproduced therefrom, other than a soundtrack associated with a film, but includes, in relation to a performance, a film incorporating the performance; 13/2015
S. 2(i).

“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;

13/2015
S. 2(j).

“Register” means the Register of Copyright and Related Rights kept pursuant to section 9A;

“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 process” means a process—

(a) for making facsimile copies; or

(b) involving the use of an appliance for making multiple copies,

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

13/2015
S. 2(k).

“rights management information” means any information attached to or embodied in a copy of a work or other subject matter, which identifies—

(a) the work;

(b) the author of the work;

(c) the owner of any right in the work;

(d) the performer of a performance embedded in the work;

(e) the terms or conditions of the use of the work; or

(f) any numbers or codes that represent any of the information set out in paragraph (a), (b), (c), (d) or (e);

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

“service provider” means a person who is the holder of a service provider licence issued under section 13 of the Telecommunications Act; 13/2015 S. 2(l).

“sound recording” means—

(a) a recording of sounds from which sounds or representation of the sounds may be reproduced; or 13/2015 S. 2(m).

(b) a recording of the whole or any part of a literary, dramatic or musical work from which sounds or representation of the sounds reproducing the work or part may be produced, 13/2015 S. 2(m).

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced;

“specified country” means a country specified by the Minister by order pursuant to section 144;

“specified service” means a telecommunication service or such other service as may be prescribed under the Telecommunications Act; 13/2015 S. 2(n).

“technological protection measure” means a device or component or feature incorporated into a process that is designed in the ordinary course of its operation, to prevent or inhibit the infringement of rights in a protected work by— 13/2015 S. 2(n).

(a) ensuring that access to the work is available solely by use of an access code or process, including decryption, descrambling or other transformation of the work, with the authority of the owner or exclusive licensee of the copyright;

(b) a copy control mechanism, which limits the number of permissible copies that may be made of the protected work;

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

“typeface” includes an ornamental motif used in printing;

“unauthorized” when used to described any act done in relation to a work, means—

(a) if copyright subsists in the work, done otherwise than by or with the licence of the owner of the copyright;

(b) if copyright does not subsist in the work, done otherwise than by or with the licence of the author or person lawfully claiming under him;

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

“work” means—

(a) a literary, dramatic, musical or artistic work;

(b) a sound recording, film, broadcast or cable programme;

(c) the typographical arrangement of a published edition,

and accordingly “protected work” means a work of any of such categories in which copyright subsists by virtue of this Act;

“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 separate from the contribution of the other author or authors;

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

(2) References in this Act to the time at which, or the period during which, a work was made are references to the time or period at or during which it was first written down, recorded or expressed in some other material form.

3.—(1) Subject to the following provisions of this section, **Publication.** for the purposes of this Act publication in relation to a work means the issue of copies of the work to the public (whether by way of sale or otherwise) including, where the work is a literary, musical, dramatic or artistic work, the making available of copies to the public by means of an electronic retrieval system; and all related expressions shall be construed accordingly.

(2) References in this Act to the issue to the public of copies of a work are to the act of putting into circulation copies not previously put into circulation in Jamaica or elsewhere, and not to—

- (a) any subsequent distribution, sale, hiring or loan of those copies; or
- (b) any subsequent importation of those copies into Jamaica,

except that in relation to sound recordings, films and computer programs, the act of issuing copies to the public includes any rental of copies to the public.

(3) For the purposes of this Act “commercial publication” in relation to a literary, dramatic, musical or artistic work means—

[The inclusion of this page is authorized by L.N. 42/1995]

- (a) issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public; or
 - (b) making the work available to the public by means of an electronic retrieval system,
- and related expressions shall be construed accordingly.

(4) 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.

(5) The following do not constitute publication for the purposes of this Act—

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

- (i) the performance of the work; or
- (ii) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system);

(b) in the case of an artistic work—

- (i) the exhibition of the work;
- (ii) the issue to the public of copies of a graphic work representing, or of photographs of, a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship;
- (iii) the issue to the public of copies of a film including the work; or
- (iv) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system);

(c) in the case of a sound recording or film—

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

(6) A publication that is merely colourable and is not intended to satisfy the reasonable requirements of the public shall be disregarded for the purposes of this Act except in so far as it may constitute an infringement of copyright or rights conferred on performers or persons having recording rights or may constitute an offence under this Act.

(7) For the purposes of this Act, a publication in Jamaica or in any other country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

(8) In determining, for the purposes of any provision of this Act—

- (a) whether a work has been published;
- (b) whether a publication of a work was the first publication of the work; or
- (c) whether a work was published or otherwise dealt with in the lifetime of a person,

any unauthorized publication or the doing of any other unauthorized act shall be disregarded.

4.—(1) In relation to the broadcast of a work, 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.

Lawful
reception of
broadcast.

(2) References in this Act to the person making a broadcast, broadcasting a work or including a work in a broadcast are references—

- (a) to the person transmitting the programme, to the extent that he has responsibility 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 Act to a programme, in the context of broadcasting, are to any item included in a broadcast.

PART II

COPYRIGHT

Protected Works

Require-
ments for
protection.

5.—(1) Unless otherwise specifically provided in this Act, copyright shall not subsist in any work unless it satisfies the requirements specified in this Part as respects—

- (a) the category of work; and
- (b) either—
 - (i) the qualification of the author; or
 - (ii) the country or place of first publication, or in the case of a broadcast or cable programme, the country or place where it is made or from which it is sent, as the case may be.

(2) If the requirements of this Part or of section 146 are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

Category
of eligible
works.

6.—(1) Copyright is a property right which, subject to the provisions of this section, may subsist in the following categories of work—

(a) original literary, dramatic, musical or artistic works;
(b) sound recordings, films, broadcasts or cable programme;
(c) typographical arrangements of published editions,
and copyright may subsist in a work irrespective of its quality or the purpose for which it was created.

(2) A literary, dramatic or musical work shall not be eligible for copyright protection unless it is recorded in writing or otherwise; and any reference in this Act to the time at which a work is made is a reference to the time at which it is so recorded.

(3) For the purposes of subsection (2), it is immaterial whether the work is recorded by or with the permission of the author; and where it is not recorded by the author, nothing in that subsection shall affect the question whether copyright subsists in the record of the work as distinct from the work recorded.

(3A) Copyright subsisting in a literary work that is a compilation does not extend to any works, data or other material comprised in the compilation and does not affect any copyright which may exist in such works, data or other material.

29/1999
S. 3.

(4) Copyright shall 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.

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

(6) Copyright shall 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.

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

(8) Copyright protection does not extend to an idea, concept, process, principle, procedure, system or discovery or things of a similar nature.

Qualification
for protection:
author.

7.—(1) A work qualifies for copyright protection if the author was a qualified person at the material time.

(2) A work of joint authorship qualifies for copyright protection if any of the authors satisfies the requirement of subsection (1), so however, that, where a work qualifies for copyright protection only under this section, only those authors who satisfy such requirement shall be taken into account for the purposes of sections 9 and 22.

(3) In this section “the material time” means in relation to—

- (a) an unpublished literary, dramatic, musical or artistic work, when the work was made or, if the work extended over a period, a substantial part of that period;
- (b) a published literary, dramatic, musical or artistic work when the work was first published or, if the author had died before that time, immediately before his death;
- (c) a sound recording or film, when it was made;
- (d) a broadcast, when the broadcast was made;
- (e) a cable programme, when the programme was included in a cable programme service;
- (f) the typographical arrangement of a published edition, when the edition was first published.

8.—(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, having regard to section 3, it is first published in Jamaica or a specified country.

Qualification
for protection:
place of
publication,
etc.

(2) A broadcast qualifies for copyright protection if it is made from a place in Jamaica or a specified country by a broadcasting organization in possession of a valid licence granted to it under any law in Jamaica or a specified country regulating broadcasting.

(3) A cable programme qualifies for copyright protection if it is sent from a place in Jamaica or in a specified country in accordance with the law in force regulating transmission by cable.

9.—(1) By virtue of and subject to the provisions of this Act, the owner of the copyright in a work shall have the exclusive right to do or to authorize other persons to do any of the following acts in Jamaica—

Nature of
copyright
protection:
economic and
moral rights.

- (a) to copy the work;
- (b) to issue copies of the work to the public;
- (c) to perform the work in public or, in the case of a sound recording, film, broadcast or cable programme, to play or show 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 and, in relation to such adaptation, to do any or all of the foregoing acts; or
- (f) to authorize any communication to the public of the work by wire or wireless means, including making the work available for access by any member of the

13/2015
S. 3(a)(i).

13/2015
S. 3(a)(ii).

13/2015
S. 3(a)(iii).

public from a place and time determined by the member of the public.

13/2015
S. 3(b).

(2) Subject to subsection (1)(e), adaptations of a work shall be protected as original works, without prejudice to the copyright in the original work.

13/2015
S. 3(b).

(3) For the purposes of subsection (1) references to the doing of any act in relation to any work means the doing of the act—

(a) in relation to the whole or any substantial part of the work; and

(b) either directly or indirectly,

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

13/2015
S. 3(b).

(4) By virtue of and subject to the provisions of this Act—

(a) the author of a literary, dramatic, musical or artistic work that is a protected work; or

(b) the director of a film that is a protected work,

shall have in respect of such work, whether or not he is the owner of the copyright in the work, the moral rights specified in Part III.

Register of
Copyright
and Related
Rights.
13/2015
S. 4.

9A.—(1) There shall be kept by the Jamaica Intellectual Property Office, (whether electronically or otherwise) a Register to be called the Register of Copyright and Related Rights, in which shall be entered the following information submitted pursuant to an application under section 9B—

(a) the names or titles of works in which copyright is presumed to subsist;

- (b) the names and addresses of authors, publishers and owners of copyright and related rights, assignees of copyright and persons to whom an interest in copyright has been granted by licence; and
- (c) such other particulars as may be prescribed.

(2) Documents purporting to be copies of or extracts from any entry in the Register, if certified by the Executive Director or other authorized officer under the seal of the Office, shall in the absence of evidence to the contrary, be presumed to be authentic for all purposes and shall be admissible as evidence of the contents thereof in any legal proceedings.

9B.—(1) Any person referred to in subsection (2)(c), or his agent, who intends to name particulars of a work entered in the Register, shall make an application to the Executive Director, in the form prescribed as Form A in the First Schedule, accompanied by the fees prescribed in relation thereto in the Third Schedule.

Application
to enter
particulars in
Register.
13/2015
S. 4.
Form A.
First
Schedule.
Third
Schedule.

(2) An application made under subsection (1) shall contain—

- (a) the name and address of the author, and if the author is dead, the date of the author's death, if known;
- (b) the name and address of the owner of the copyright in the work;
- (c) a declaration in the form prescribed as Form B in the First Schedule that the applicant is—
 - (i) the author of the work;
 - (ii) the owner of the copyright in the work;

Form B.
First
Schedule.

(iii) a person to whom a partial assignment as described under section 23(2) has been made; or

(iv) a person to whom an interest in the copyright has been granted by licence;

(d) the nature of the work;

(e) the title of the work;

(f) in the case of a published work, the date and place of first publication; and

(g) any additional information as may be prescribed.

(3) Where the Executive Director receives an application under this section, the Executive Director may conduct such inquiry as the Executive Director deems fit before entering the particulars of the work in the Register.

(4) Where the Executive Director enters a work in the Register, the Executive Director shall issue to the applicant under this section a certificate of registration in the form set out as Form C in the First Schedule.

Form C.
First
Schedule.

Copyright
author, owner
or assignee,
etc., not
deprived of
rights where
copyright not
registered.
13/2015
S. 4.

9C.—(1) The non-registration in the Register, of a work in accordance with section 9A, shall not deprive a person referred to in section 9B (2)(c)(i),(ii),(iii) or (iv) of his rights under this Act in relation to the work.

(2) For the avoidance of doubt and without limiting the generality of subsection (1), the registration of a work in the Register is not a condition precedent to instituting legal action for the infringement of copyright or any related rights in the work.

Executive
Director may
amend or alter
the Register.
13/2015
S. 4.

9D. The Executive Director may, as advised by the applicant for registration of a work, or on the Executive Director's own motion, and shall if so directed by a court of

competent jurisdiction, amend or alter the Register, in relation to any work registered therein, to—

- (a) correct any error in any name, address or particulars, or other error appearing in the Register in relation to the work;
- (b) record—
 - (i) any transfers in ownership or other dealing in the work; or
 - (ii) the date of death of the author;
- (c) update any name, address or other particulars; and
- (d) remove the entry in relation to the work where—
 - (i) the Executive Director is satisfied that the entry has been obtained by fraud or other malfeasance; or
 - (ii) if the applicant so requests.

9E.—(1) Subject to subsection (2), an author or owner of copyright and related rights, in relation to work registered in the Register, may make a request to change the details of such registration in the form set out as Form D in the First Schedule.

Author or owner of copyright may request to change registration details.
Form D.
First Schedule.
13/2015
S. 4.

(2) The Executive Director may refuse to make the change requested under subsection (1) if the Executive Director is satisfied that—

- (a) the interest of any other person is likely to be adversely affected and no satisfactory evidence of consent has been provided to the Executive Director of that person to the change; or
- (b) it would be improper to make the change in the absence of—

- (i) a court order; or
- (ii) the carrying out of any action appearing to the Executive Director to be prudent in the circumstances.

Register open
for public
inspection.
13/2015
S. 4.

9F. The Office shall make the Register available for public inspection whether by electronic or other access thereto.

Publication
of corrections
to the
Register.
13/2015
S. 4.

9G. The title or names of works, names and addresses of authors and other prescribed particulars of authors and works in every entry made in the Register, and any corrections made thereto may be published by the Executive Director from time to time.

Damages
caused by
fraud, etc.
recoverable in
Court.
13/2015
S. 4.

9H. Where a person applies for the registration of copyright on behalf of another person, and as a result of a fraudulent or an erroneous assumption of such authority, damages results to the copyright owner or owner of related rights, such damages shall be recoverable in court.

Immunity of
Office in
relation to
Register.
13/2015
S. 4.

9I. The Office shall not be liable in respect of any action done or omission made in good faith, in relation to any of its functions exercised under section 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H or 9I.

Duration of Copyright Protection

Duration of
copyright in
literary, etc.
works.
13/2015
S. 5

10.—(1) Subject to the provisions of this section, copyright in any literary, dramatic, musical or artistic work expires at the end of the period of ninety-five years from the end of the calendar year in which the author dies.

13/2015
S. 5.

(2) Where the authorship of a work referred to in subsection (1) is unknown, copyright in that work expires at the end of the period of ninety-five years from the end of the calendar year in which it was first made available to the public; and subsection (1) shall not apply if the

identity of the author becomes known after the end of that period.

(3) For the purpose of subsection (2), acts which constitute the making available of a work to the public include—

- (a) in relation to a literary, dramatic or musical work, the performance of the work in public or its broadcast or inclusion in a cable programme service;
- (b) in relation to an artistic work, the exhibition of the work in public or its inclusion in a film shown to the public or in a broadcast or cable programme service;

so, however, that in determining for the purpose of this subsection whether a work has been made available to the public any unauthorized act shall be disregarded.

(4) The provisions of subsections (1) and (2) shall not apply to computer-generated work, the copyright in which expires at the end of the period of ninety-five years from the end of the calendar year in which the work was made.

13/2015
S. 5.

(5) In relation to a work of joint authorship—

- (a) the reference in subsection (1) to the death of the author shall be construed—
 - (i) where the identity of all the authors is known, as a reference to the death of the last of them to die;
 - (ii) where the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last 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.

(6) This section does not apply to copyright which subsists by virtue of section 146.

Duration of
copyright in
sound re-
cordings
and films.
13/2015
S. 6.

11.—(1) Copyright in a sound recording or film expires at the end of the period of ninety-five years from the end of the calendar year in which it was made or, where it is made available to the public before the end of that period, ninety-five years from the end of the calendar year in which it is so made available.

(2) For the purposes of subsection (1) a sound recording or film is made available to the public when—

- (a) it is first published, broadcast or included in a cable programme service;
- (b) in the case of a film or film sound-track, the film is first shown in public,

but in determining whether a sound recording or film has been made available to the public, any unauthorized act shall be disregarded.

Duration of
copyright in
broadcasts
and cable
programmes.
13/2015
S. 7.

12.—(1) Copyright in a broadcast or cable programme expires at the end of the period of ninety-five years from the end of the calendar year in which the broadcast was made or the programme included in a cable programme service.

(2) Copyright in a repeat broadcast or a repeat cable programme expires at the same time as copyright in the original broadcast or cable programme; and accordingly; no copyright arises in respect of a repeat broadcast or a repeat cable programme which is broadcast or, as the case may be, included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.

(3) Reference in subsection (2) to a repeat broadcast or a repeat cable programme means one which is a repeat of a broadcast previously made or, as the case may be, of a cable programme previously included in a cable programme service.

13. Copyright in the typographical arrangement of a published edition expires at the end of the period of fifty years from the end of the calendar year in which the edition was first published.

Duration of copyright in typographical arrangement of editions.
13/2015
S. 8.

13A. Where, pursuant to an agreement between employer and employee, the copyright in a work created by the employee has vested in the employer, the copyright expires at the end of the period of ninety-five years from the end of the calendar year in which the work was created.

Duration of copyright where copyright vests in employer.
13/2015
S. 9.

13B.—(1) Where a work is made by a person employed or engaged by the Crown under a contract of service, a contract of apprenticeship or a contract for services, the Crown is the first owner of any copyright in the work, subject to any agreement to the contrary.

Crown copyright and duration.
13/2015
S. 9.

(2) Notwithstanding subsection (1), Crown copyright shall subsist in a literary work consisting of any of the following works—

- (a) a Bill introduced into either of the Houses of Parliament or any report of a committee of Parliament;
- (b) an Act of Jamaica or any subsidiary legislation; or
- (c) the Hansard Reports of Parliamentary Debates.

(3) Crown copyright shall not be deemed to be infringed by non commercial use of work, if such use is not misleading, mischievous or otherwise derogatory.

(4) Nothing in subsection (2) shall affect copyright in any work that is incorporated by reference in a work referred to in subsection (2).

(5) Crown copyright shall expire—

- (a) in the case of a typographical arrangement of a published edition, at the end of the period of fifty years from the end of the calendar year in which the work is made; and
- (b) in the case of any other work, at the end of the period of ninety-five years from the end of the calendar year in which the work is made.

(6) This section applies only—

- (a) in relation to authors employed by the Crown and the copyright existing by virtue of their contribution to the work;
- (b) in the case of a work of joint authorship (other than where paragraph (a) would apply) where one or more, but not all, of the authors are persons employed or engaged by the Crown under—
 - (i) a contract of service;
 - (ii) a contract of apprenticeship; or
 - (iii) a contract for services.

(7) Without limiting the effect of section 150, the Minister may make regulations in relation to Crown copyright, including any dealings therein or any exceptions to infringements thereof.

13C. Subject to the provisions of this Act, this Act applies in relation to Crown copyright as to other copyright.

PART III

MORAL RIGHTS AND RELATED RIGHTS

Identification with Work

14.—(1) Subject to subsection (9) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work have, respectively, the right to be identified as the author or, as the case may be, director of the work in the circumstances specified in this section.

Right to
be identi-
fied as
author, etc.

(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 as such whenever—

- (a) the work or an adaptation thereof 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 or an adaptation thereof are issued to the public.

(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 as such whenever—

- (a) the work or an adaptation thereof is published commercially;
- (b) copies of a sound recording of the work or an adaptation thereof are issued to the public; or
- (c) a film, the sound track of which includes the work, is shown in public or copies of such film are issued to the public.

(4) The author of an artistic work has the right to be identified as such 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) In addition to the right specified in paragraph (c) of subsection (4), 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 as such 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 an 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 a 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, exhibi-

tion, film, broadcast or cable programme in question,
and the identification must, in each case, be clear and reasonably prominent.

(8) For the purposes of this section, any reasonable form of identification may be used.

(9) Except as may otherwise be explicitly provided by contract, the right conferred by this section does not apply in relation to—

- (a) a computer program, the design of a typeface or a computer-generated work;
- (b) any work made for the purpose of reporting current events;
- (c) the publication in a newspaper, magazine or similar periodical or in an encyclopaedia, dictionary, year-book or other collective work of reference, of a literary, dramatic, musical or artistic work made for the purposes of such publication or made available with the consent of the author for purposes of such publication;
- (d) a work in which copyright originally vested in an international organization by virtue of section 146, unless the author or director has previously been identified as such in or on published copies of the work.

Objection to Treatment of Work

15.—(1) Subject to subsections (2) and (3) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment; and such right is in-

Right to
object to
derogatory
treatment
of work.

fringed by any person who does any of the acts specified in section 37 in the circumstances so specified.

(2) The right does not apply in relation to—

- (a) a computer program or to a computer-generated work;
- (b) fair dealing with any work made for the purpose of reporting current events;
- (c) the publication in any newspaper, magazine or similar periodical or in an encyclopaedia, dictionary, yearbook or other collective work of reference, of a literary, dramatic, musical or artistic work made for the purposes of such publication, or made available with the consent of the author for the purposes of such publication, subject, in any particular case, to any agreement excluding the operation of the foregoing provisions of this paragraph to that case;
- (d) any subsequent publication elsewhere of such work as is referred to in paragraph (c), subject to any such agreement as is referred to in that paragraph.

(3) The right does not apply to anything done by or with the authority of the copyright owner in relation to works in which copyright originally vested in an international organization by virtue of section 146 unless the author or director—

- (a) is identified at the time of the relevant act; or
- (b) has previously been identified in or on published copies of the work,

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

(4) In this section—

- (a) “derogatory treatment” in relation to a work means any addition to, deletion from, alteration to or adaptation of the work (not being a translation of a literary or dramatic work or an arrangement or transcription of a musical work involving no more than a change of key or register) which amounts to a distortion or mutilation of the work, or is otherwise prejudicial to the honour or reputation of the author or director, as the case may be; and
- (b) “sufficient disclaimer” means a clear and reasonably prominent indication—
 - (i) given at the time of the act; and
 - (ii) 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.

Related Rights

16.—(1) A person has the right—

- (a) not to have a literary, dramatic, musical or artistic work falsely attributed to him as author; and
- (b) not to have a film falsely attributed to him as director, and in this section “attribution”, in relation to such work, means a statement, whether express or implied, as to the identity of the author or director.

False attribution of work.

(2) The right conferred by subsection (1) is infringed in the circumstances specified in section 40.

17. Subject to section 41, a person who for private and domestic purposes commissions the taking of a photograph

Right to privacy of photographs and films.

or the making of a film has, where the resulting work is a protected work, the right not to have—

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

Supplementary

Duration of
moral rights
and related
rights.

18.—(1) The rights conferred by sections 14, 15 and 17 subsists so long as copyright subsists in the work.

(2) The right conferred by section 16 subsists until the end of the period of twenty years from the end of the calendar year in which the person dies.

Consent and
waiver of
rights.

19.—(1) A person having a right conferred under this Part may consent to the doing of any act affecting such right or may waive the right.

(2) A right to which subsection (1) refers may be waived by instrument in writing signed by the person giving up the right, and the waiver—

- (a) may relate to works generally or to a specific work or class of works and may relate to existing or future works; and
- (b) may be conditional or unconditional and may be expressed to be subject to revocation.

(3) Where a waiver is made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it shall be presumed to extend to his licensees and successors in title, unless a contrary intention is expressed.

(4) Nothing in this Part shall be construed as excluding the operation of the general law of contract or estoppel

in relation to an informal waiver or other transaction in relation to any of the rights to which this Part relates.

20.—(1) The right conferred under section 14 is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author.

Application
of provi-
sions to
joint works.

(2) The right conferred by section 15 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 of rights under section 19 by one joint author does not affect the rights of the other joint authors.

(4) Subsections (1), (2) and (3) also apply, with such modifications as are necessary, in relation to a film which was, or is alleged to have been, jointly directed as they apply to a work which is, or alleged to be, a work of joint authorship; and for the purpose of this subsection, 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.

(5) The right conferred by section 17 is, in the case of a work made in pursuance of a joint commission, a right of each person who commissioned the making of the work, so that—

- (a) the right of each is satisfied if he consents to the act in question; and
- (b) a waiver under section 19 by one of them does not affect the rights of the others.

21. The rights conferred by—

- (a) sections 14 and 17 apply in relation to the whole or any substantial part of a work; and

Application
of provi-
sions to
parts of
work.

[The inclusion of this page is authorized by L.N. 42/1995]

- (b) sections 15 and 16 apply in relation to the whole or any part of a work.

PART IV

OWNERSHIP AND ASSIGNMENT OF RIGHTS

Ownership of Copyright

Ownership
of copyright.

22.—(1) Subject to the provisions of this section, the author of a protected work is the first owner of any copyright in that work unless there is an agreement to the contrary.

(2) Subsection (1) shall not apply to copyright subsisting in a work pursuant to section 146.

(3) Where a protected work is a work of joint authorship the authors thereof shall be co-owners of the copyright in that work.

Assignment of Copyright

Assignment
and licences.

23.—(1) Subject to the provisions of this section, copyright in a work may be transferred as personal or moveable property by—

- (a) assignment;
- (b) testamentary disposition; or
- (c) operation of law,

and a transfer pursuant to this section by way of assignment shall not be effective unless it is in writing and signed by or on behalf of the assignor.

(2) An assignment or other transfer of copyright may be partial, that is to say, limited so as to apply—

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

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

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

Prospective
ownership
of copy-
right.

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

25. The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

Exclusive
licence.

26. Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to—

Copyright in
unpublished
manuscript
passes under
will.

(a) an original document or other material thing that records or embodies 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,

then, unless a contrary intention is indicated in the testator's will or a codicil to it, the bequest shall be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

Moral rights
etc. not
assignable.

27. The rights conferred under Part III are not assignable.

Transmis-
sion of
moral rights
etc. on
death.

28.—(1) On the death of a person entitled to the right conferred by section 14, 15 or 17—

- (a) the right passes to such person as he may by testamentary disposition specifically direct; or
- (b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes,

and if, or to the extent that, the right does not pass under paragraph (a) or (b), it is exercisable by his personal representatives.

(2) Where copyright forming part of a person's estate passes in part to one person and in part to another, any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.

(3) Where by virtue of paragraph (a) or (b) of subsection (1) a right becomes exercisable by more than one person, then—

- (a) where the right is conferred by section 15 or 17, it is a right exercisable by each of them and is satis-

fied in relation to any of them if he consents to the treatment or act in question; and

- (b) any waiver of the right in accordance with section 19 by one of them does not affect the rights of the others.

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

(5) Any infringement after a person's death of the right conferred by section 16 is actionable by his personal representatives.

(6) Any damages recovered by personal representatives by virtue of 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.

PART V

INFRINGEMENT OF RIGHTS

General Provisions

29. In this Part "action" includes a counterclaim and references to the plaintiff and to the defendant in an action shall be construed accordingly.

Meaning of "action".

30. This Part shall have effect subject to such provisions of this Act as—

Provisions of Part subject to other provisions.

- (a) authorize the doing of specified acts in relation to a protected work; or
- (b) provide for the licensing of a protected work.

Infringement of Copyright

31.—(1) The copyright in a work is infringed by any person who, without the licence of the copyright owner, does, in relation to that work, any of the acts which the copyright owner has the exclusive right to do pursuant to section 9.

Acts infringing copyright.

(2) Copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into Jamaica for any purpose other than for his private and domestic use, an article which he knows or has reason to believe is, an infringing copy of the work.

(3) 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 or lets for hire or offers or exposes for sale or hire;
- (c) exhibits in public or distributes in the course of a business; or
- (d) distributes otherwise than in the course of a business, to such an extent as to affect prejudicially the owner of the copyright,

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

(4) Copyright in a work is infringed by a person who, without the licence of the copyright owner—

- (a) makes;
- (b) imports into Jamaica;
- (c) possesses in the course of a business; or
- (d) sells or lets for hire or offers 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.

(5) 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 Jamaica or elsewhere.

(6) 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 also liable for the infringement unless when he gave permission he believed on reasonable grounds that the performance would not infringe copyright.

(7) 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 or showing films or receiving visual images or sounds conveyed by electronic means, the persons specified in subsection (8) are also liable for the infringement.

(8) The persons referred to in subsection (7) are—

- (a) a person who supplied the apparatus or any substantial part of it, if when he supplied the apparatus or part—
 - (i) he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright; or
 - (ii) in the case of apparatus whose normal use 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) an occupier of premises who gave permission for the apparatus to be brought onto the premises, if when he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright; and
- (c) a 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.

Remedies of Copyright Owner

Action by
owner of
copyright.

32.—(1) An infringement of copyright shall be actionable at the suit of the copyright owner; and, subject to the provisions of this section, in any action for such an infringement all such relief by way of damages, injunction, accounts or otherwise, shall be available to the plaintiff as is available in respect of the infringement of other proprietary rights.

(2) Where in an action under this section an infringement of copyright is proved or admitted the court, having regard to any benefit accruing to the defendant by reason of the infringement, to the flagrancy of the infringement and to all other material considerations, shall have power to award such additional damages as the court may consider appropriate in the circumstances.

(3) 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, then, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

Order for
delivery up
in civil
proceedings.

33.—(1) Subject to the provisions of this section and section 35(6), where a person—

- (a) in the course of his business has an infringing copy of a work in his possession, custody or control;
- (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work, knowing or having reason to believe that it has been or is being used to make infringing copies; or
- (c) has in his possession, custody or control, a circumvention device, knowing or having reason to believe that the circumvention device has been or is being used to—

- (i) circumvent a technological protection measure;

13/2015
S. 10(a).

13/2015
S. 10(b).

13/2015
S. 10(c).

(ii) give unauthorized access to a protected work;
or

(iii) make infringing copies of a protected work,

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

13/2015
S. 10(d).

(2) An application under subsection (1) shall not be made after the end of the period specified in section 138(1); 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 137 for the disposal of the infringing copy or article, as the case may be.

(3) A person to whom an infringing copy or other article is delivered up pursuant to an order made under this section shall, if an order under section 137 is not made, retain it pending the making of an order or the decision not to make an order, under that section.

Remedies of Exclusive Licensee

34. 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.

Infringe-
ment of rights
of exclusive
licensee.

35.—(1) The rights and remedies of an exclusive licensee are concurrent with those of the copyright owner and references in the relevant provisions of this Act to the copyright owner shall be construed accordingly.

Infringe-
ment where
rights con-
current.

(2) In an action brought by an exclusive licensee by virtue of 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.

(3) Where an action for infringement of copyright is brought by the copyright owner or by an exclusive licensee, and the action relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the

copyright owner or the exclusive licensee, as case may be, shall not be entitled, except with the leave of the Court, to proceed with action, unless the other party is either joined as a plaintiff in the action or added as a defendant; but this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.

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

(5) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action, then, whether or not the copyright owner and the exclusive licensee are both parties to the action, the court—

- (a) shall, in assessing damages take into account the terms of the licence and any pecuniary remedy already awarded or available to either of them in respect of the infringement;
- (b) shall not direct an account of profits 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) shall, if an account of profits is directed, apportion the profits between them as the court considers just, subject to any agreement between them.

(6) The copyright owner shall notify any exclusive licensee having concurrent rights before applying under section 33 for an order for the delivery up of infringing copies of a work, and the court may, on the application of the licensee, having regard to the terms of the licence, make such order under section 33 as it thinks fit.

Infringement of Moral Rights and Related Rights

36.—(1) Subject to subsection (2), the right conferred by section 14 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

Infringe-
ments of
rights to be
identified as
author or
director.
13/2015
S. 11(a).

(2) The following acts shall not constitute an infringement of the right conferred by section 14 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work—

- (a) fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme;
- (b) the incidental inclusion of the work in an artistic work, sound recording, film, broadcast or cable programme;
- (c) the use of the work for examination purposes;
- (d) acts done for the purposes of parliamentary or judicial proceedings or proceedings of a statutory inquiry;
- (e) the use of design documents and models;
- (f) the use of a design derived from artistic work;
- (g) acts permitted in relation to anonymous or pseudonymous or orphan works on the assumption that copyright in the work has expired or that author is dead or that the copyright owner cannot be identified or located after reasonable inquiry.

13/2015
S. 11(b)(i).

13/2015
S. 11(b)(ii).

37.—(1) The right conferred on an author and a director by section 15 to object to derogatory treatment of his work is infringed where the acts described in subsections (2) to (5) are done in relation to that work; and for the purposes of this Part, “derogatory treatment” has the same meaning as that specified in section 15(4).

Infringe-
ment of
right to
object to
derogatory
treatment
of work.

(2) 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.

(3) 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 a work of architecture in the form of a model for a building or in the case of a sculpture or 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.

(4) Subsection (3) 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.

(5) 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.

38.—(1) The right conferred by section 15 is also infringed by a person who—

Infringe-
ment by
possession
of infring-
ing article.

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

an article which is, and which he knows or has reason to believe is an infringing article.

(2) An “infringing article” means a work or a copy of a work which—

- (a) has been subjected to derogatory treatment as defined in section 15; and
- (b) has been or is likely to be the subject of any of the acts mentioned in sections 37 and 38 in circumstances infringing that right.

39.—(1) The right conferred by section 15 is not infringed by any act done for the purpose of—

Acts not
infringing
section 15.

- (a) avoiding the commission of an offence; or
- (b) complying with a duty imposed by or under an enactment,

so, however, that, where the author or director is identified at the time of the relevant act or has previously been identi-

fied in or on published copies of the work, there shall be a sufficient disclaimer.

(2) In subsection (1) “sufficient disclaimer” 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.

False attribution of work: infringement of right.

40.—(1) Subject to the provisions of this section, the right conferred on a person by section 16 not to have a literary, dramatic, musical or artistic work falsely attributed to him as author or a film falsely attributed to him as director, 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;
- (b) exhibits in public an artistic work or a copy of an artistic work in or on which there is a false attribution.

(2) The right is also 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.

(3) The right is also infringed by any person who issues to the public or displays in public any material con-

taining a false attribution in connection with any act referred to in subsection (1) or (2).

(4) The right is also infringed by a person who, in the course of a business—

- (a) possesses or deals with a copy of a work referred to 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 an attribution and that it is false.

(5) In the case of an artistic work, the right is also infringed by a person who in the course of a business—

- (a) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author; or
- (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 such is not the case.

(6) References in this section to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public or distributing.

(7) This section applies where a work is falsely represented as being an adaptation of the work of a person as it applies where the work is falsely attributed to a person as author.

41. The right conferred by section 17 in relation to a commissioned photograph or film is infringed by a person who does or authorizes the doing of any act mentioned in that section in relation to that work; but the right is not infringed

Infringe-
ment of
privacy
right
respecting
photo-
graphs,
etc.

by any act which, pursuant to Part VI, would not infringe copyright in the work.

Effect of
consent and
waiver of
rights.

42. It is not an infringement of any right conferred by section 14, 15, 16 or 17 to do any act to which the person entitled to the right has consented pursuant to section 19 or in respect of which he has given a waiver pursuant to that section.

Remedies for Infringement of Moral Rights and Related Rights

Remedies
for in-
fringing
moral
rights, etc.

43.—(1) The infringement of a right conferred under section 14, 15, 16 or 17 is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) In an action for infringement of the right conferred by section 15, the court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made on such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work.

(3) Where in any action an infringement of a right referred to in subsection (1) is proved or admitted, the court may order the defendant to publish such correction in such terms and in such manner as the court may direct.

Presumptions

Presump-
tions where
action
relates to
literary
works, etc.

44.—(1) In an action brought by virtue of this Part with respect to a literary, dramatic, musical or artistic work, the presumptions specified in this section shall apply.

(2) Where a name purporting to be that of the author appeared on the work when it was made or on copies of the work as published, it shall be presumed that the person whose name appeared is the author of the work

and also the owner of the copyright in the work, until the contrary is proved.

(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 appeared as mentioned in subsection (2) but—

(a) pursuant to section 8 (1), the work qualifies for copyright protection by virtue of the country of first publication; and

(b) a name purporting to be that of the publisher appeared on the copies of the work as first published, then, it shall be presumed that the person whose name appeared was the owner of copyright at the time of publication, until the contrary is proved.

(5) Where the author of the work is dead or where the identity of the author 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 what was the first publication of the work and as to the country of first publication are correct.

45.—(1) In an action brought by virtue of this Part with respect to a sound recording, film or computer program, the presumptions specified in this section shall apply.

Presump-
tions where
action
relates to
sound
recordings,
films, or
computer
programs.

(2) In an action brought by virtue of this Part with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating—

(a) that a named person was the owner of copyright in the recording at the date of issue of the copies; or

(b) that the recording was first published in a specified year or in a named country,
the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(3) In an action brought by virtue of this Part with respect to a film, where copies of the film as issued to the public bear a statement—

- (a) that a named person was the 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 specified year or in a named country,

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

(4) In an action brought by virtue of this Part with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement—

- (a) that a named person was the owner of copyright in the program at the date of issue of the copies;
or
- (b) that the program was first published in a named country or that copies of it were first issued to the public in electronic form in a specified year,

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

(5) The presumptions specified in subsections (2), (3) and (4) apply equally in an action relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.

(6) In an action brought by virtue of this Part with respect to a film, where the film as shown in public, broadcast or included in a cable programme service bears a statement—

- (a) that a named person was 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,

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

Offences

46.—(1) Any person who at a time when copyright in a work subsists by virtue of this Act—

Penalties in respect of dealings which infringe copyright.

- (a) makes for sale or hire; or
- (b) in the course of a business sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes; or
- (c) imports into Jamaica for purposes other than his private and domestic use; or
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

any article which he knows or has reason to believe is an infringing copy of that work, commits an offence.

(2) Any person who, at the time when copyright subsists in a work by virtue of this Act, makes or has in his possession an article specifically designed or adapted for making copies of that work, knowing that it is to be used for making infringing copies for sale or hire or for use in the course of business, commits an offence.

(3) Any person who causes—

(a) a literary, dramatic or musical work done to be performed in public; or

(b) a sound recording or film to be played, or as the case may be, shown in public,

(otherwise than by reception of a broadcast or cable programme) knowing or having reason to believe that copyright subsists in the work and that the performance, playing or showing, as the case may be, constitutes an infringement of the copyright, commits an offence.

13/2015
S. 12.

(3A) A person who causes—

(a) the manufacture of a circumvention device;

(b) the importation into Jamaica, of a circumvention device for sale or rental;

(c) the distribution of a circumvention device; or

(d) the unauthorized broadcast of a circumvented work,

commits an offence, if the person ought reasonably to have known that the circumvention device is likely to be used to circumvent or facilitate the circumvention of a technological protection measure that will prejudicially affect an owner of copyright.

(3B) A person commits an offence if the person causes— 13/2015
S. 12. /

- (a) the removal or alteration of rights management information attached to a copy of a protected work, without the permission of the owner or exclusive licensee of the copyright; or
- (b) the importation for distribution, the distribution or broadcast to the public of a protected work, if the person knows that the rights management information attached to the protected work has been removed or altered without the permission of the owner or exclusive licensee of the copyright.

(4) Any person who is guilty of an offence under subsection (1) shall be liable—

- (a) on summary conviction before a Resident Magistrate to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment;
- (b) on conviction before a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(5) Any person who is guilty of an offence under this section, other than an offence under subsection (1), shall be liable—

- (a) on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment;

- (b) on conviction before a Circuit Court to a fine or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Presumptions
not to apply.

47. The presumptions specified in sections 44 and 45 do not apply to proceedings for an offence under section 46, but without prejudice to their application to proceedings for an order under section 48.

Order to
deliver up in
criminal
proceedings.

48.—(1) Subject to subsection (2), the court before which proceedings are brought against a person for an offence under section 46 may, if it is satisfied that at the time of his arrest or charge—

13/2015
S. 13(a).

- (a) he had in his possession, custody or control in the course of a business an infringing copy of a protected work;

13/2015
S. 13(b).

- (b) he had in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work knowing or having reason to believe that it had been or was to be used make infringing copies; or

13/2015
S. 13(c).

- (c) he had in his possession, custody or control a circumvention device, knowing or having reason to believe that it has been or is being used to—

- (i) circumvent a technological protection measure; or

- (ii) give unauthorized access to, or make infringing copies of, a protected work,

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

13/2015
S. 13(d).

(2) An order may be made by the court of its own motion or on the application of the prosecution and may be made whether or not the person is convicted of the offence, so, however, that the court shall not make an order—

(a) after the time specified in section 138; or

(b) if it appears to the court unlikely that any order will be made under section 137.

(3) An appeal lies to the Court of Appeal from an order made under this section by a Resident Magistrate's Court.

(4) A person to whom an infringing copy or other article 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 137.

Supplementary

49. For the purposes of this Part, the provisions of sections 140 and 141 shall apply in respect of the entry and search of any premises.

Applica-
tion of
provisions
as to entry
and search.

50.—(1) The owner of the copyright in any published literary, dramatic or musical work may give notice in writing to the Commissioner of Customs—

Provision
for restricting
importation
of infring-
ing of
copies.

- (a) that he is the owner of the copyright in the work;
and
- (b) that he requests the Commissioner to treat as prohibited goods under the Customs Act, during a period specified in the notice, printed copies of the work which are infringing copies.

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

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

- (a) that he is the owner of the copyright in the work;
- (b) that infringing copies of the work are expected to arrive in Jamaica at a time and a place specified in the notice; and
- (c) that he requests the Commissioner to treat copies as prohibited goods under the Customs Act.

(4) Subject to subsection (5), where a notice has been given in accordance with this section, the importation into Jamaica of goods to which the notice relates is prohibited;

but notwithstanding anything contained in the Customs Act, a person is not liable to any penalty under that Act other than forfeiture of the goods, by reason that any goods are treated as prohibited goods by virtue of this section.

(5) The importation of any article by a person for his private and domestic use is not prohibited under subsection (4).

(6) A person giving a notice under this section shall—

- (a) comply with such conditions as the Commissioner of Customs may by regulations prescribe; and
 - (b) satisfy such requirements as may be so prescribed in connection with the giving of the notice, including requirements relating to—
 - (i) the form of the notice;
 - (ii) the furnishing of evidence, whether on giving notice, or on the importation of the goods, or at both such times;
 - (iii) the payment of fees in respect of the notice;
 - (iv) the giving of security in respect of any liability or expense which the Commissioner may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained;
 - (v) the indemnification of the Commissioner of Customs against any such liability or expenses, whether security has been given or not; and
 - (vi) any incidental or supplementary matters,
- and the regulations may make different provisions as respect different classes of case.

(7) Regulations made under subsection (6) shall be subject to negative resolution.

PART VI

EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

Preliminary

Definition of "sufficient acknowledgment".

51. For the purposes of this Part "sufficient acknowledgment" means an acknowledgement identifying the work in question by its title or other description and identifying the author, unless—

- (a) in the case of a published work, it is published anonymously or the author has agreed or required that no acknowledgement of his name should be made;
- (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.

General Exceptions

Research and private study.

52. Subject to section 54, fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

Criticism, review and reporting.

53.—(1) Subject to section 54—

- (a) fair dealing with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; and
- (b) fair dealing with a protected work (other than a photograph) for the purpose of reporting current events,

does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.

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

54. For the purpose of determining whether an act done in relation to a work constitutes fair dealing, the court determining the question shall take account of all factors which appear to it to be relevant, including—

Determining
fair dealing.

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and
- (d) the effect of the act upon the potential market for, or the commercial value of, the work.

55. Copyright in a work is not infringed—

Incidental
inclusion of
protected
work.
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- (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 the playing, showing, broadcasting or inclusion in a cable programme service of anything whose making was not an infringement of copyright by virtue of paragraph (a); or
- (c) by the making of copies for the purpose of restoring or preserving the work;
- (d) by the making of copies which are transient, temporary or incidental to the authorized publication of the work; or
- (e) by the incidental storage and copying of the work which occurs pursuant to authorized transmission of the work,

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S. 14(b).

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S. 14(c).

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S. 14(c).

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S. 14(c).

and for the purposes of this section, 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 if it is deliberately included.

Use of Work for Educational Purposes

Acts done
for pur-
poses of
instruction or
examination.

56.—(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 is done by a person giving or receiving instructions and 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 instruction.

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

Anthologies
for edu-
cational use.

57.—(1) The inclusion in a collection intended for use in educational establishments of a short passage from a published literary or dramatic work does not infringe copyright in the work if—

- (a) the collection is described in the title and in any advertisements thereof issued by or on behalf of the publisher, as being so intended;
- (b) the work was not itself published for the use of educational establishments;
- (c) the collection consists mainly of material in which no copyright subsists; and
- (d) the inclusion is accompanied by a sufficient acknowledgement.

(2) Subsection (1) does not authorize the inclusion of more than two excerpts from protected 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.

58.—(1) Subject to subsection (2), a recording of a broadcast or cable programme or a copy of such a recording may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast or cable programme or in any work included in it.

Recording of broadcast, etc. by educational establishments.

(2) Subsection (1) shall not apply if or to the extent that there is a licensing scheme certified pursuant to section 102 for the purposes of this section.

59.—(1) Subject to the provisions of this section, reprographic copies of passages from published literary, dramatic or musical works may be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work or in the typographical arrangement.

Restriction on reprographic copying by educational establishment.

(2) Not more than five per cent of any work may be copied by or on behalf of an educational establishment by virtue of this section in any quarter, that is to say, 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 authorized by this section if, or to the extent that, licences are available authorizing the copying in question and the person making the copies knew or ought to have been aware of that fact.

(4) Where a licence is granted to an educational establishment authorizing the reprographic copying of passage from any published literary, dramatic or musical work, for use by the establishment, then, any term of that licence which purports to restrict the proportion of work which may be copied (whether on payment or free of charge) to less than that permitted under this section shall be of no effect.

Sub-sequent dealings with authorized copies.

60.—(1) Where a copy of a work would be an infringing copy if the making thereof were not authorized under section 56, 58 or 59 and such copy is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing and if that dealing infringes copyright for all subsequent purposes.

(2) In subsection (1) “dealt with” means sold, or let for hire or offered or exposed for sale or hire.

Exceptions affecting Libraries and Archives

Interpretation of references; regulations.

61.—(1) In sections 62 to 65 references to the librarian or archivist include references to a person acting on his behalf.

(2) Regulations may provide that a librarian or archivist who is, pursuant to sections 62 and 65, required to be satisfied as to a matter before making or supplying a copy of a work—

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

(3) Where a person requesting a copy makes a declaration that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him, that person shall be liable for infringement of copyright as if he had made the copy himself, and the copy supplied shall be treated as an infringing copy.

62.—(1) The librarian of a prescribed library or archive may, if the prescribed conditions are complied with—

Supply by
librarian
of copies of
published
work.

- (a) make and supply a copy of an article in a periodical; or
- (b) make and supply from a published edition, a copy of part of a literary, dramatic or musical work, not being an article in a periodical,

without infringing any copyright subsisting in the text of the article or in the work, as the case may be, or in any illustrations accompanying such article or work, or in the typographical arrangement thereof.

(2) The conditions prescribed pursuant to subsection (1) shall include the following—

- (a) that copies shall be supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
- (b) in relation to an article, that no person shall be furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical;
- (c) in relation to a work referred to in paragraph (b) of subsection (1), that no person shall be furnished with more than one copy of the same material or of a copy of more than a reasonable proportion of any work; and

- (d) 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.

Supply of
copies to
other
libraries.

63.—(1) The librarian of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply to another prescribed library or archive 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 the work, or in any illustrations accompanying such article or work or, in the case of a published edition, in the typographical arrangement.

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

Replacing
copies of
works.

64.—(1) The librarian 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 for the purpose of—

- (a) preserving or replacing the item by placing the copy in such permanent collection in addition to or in place of the item;
- (b) replacing 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 such a work or, in the case of a published edition, in the typographical arrangement.

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

65.—(1) Subject to subsection (2), the librarian 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 in any illustrations accompanying it.

Copying
of unpub-
lished work.

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

- (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 of the making of the copy the librarian ought to have been aware of that fact.

(3) The prescribed conditions shall include the following—

- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study and will not use them for any other purpose;
- (b) that no person is furnished with any 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.

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Copyright of
works by
persons with
a print
disability.

Exceptions for Persons Who are Disabled

65A.—(1) An authorized body may, if the conditions in subsection (2) are complied with, make or supply copies or adaptations of published literary or dramatic works for the purpose of providing persons who have a print disability, with copies that are in an accessible format, without infringing any copyright in those literary or dramatic works.

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

- (a) the authorized body has made reasonable efforts to obtain a copy of the complete work, in an accessible format at a reasonable commercial price, but has been unable to do so;
- (b) the copies are provided only to persons having a print disability;
- (c) where any person acting on behalf of the authorized body makes a copy or adaptation of a published literary or dramatic work under this section, the authorized body shall, as soon as is reasonably practicable, take all reasonable steps to notify the owner of the copyright in the work of the making of a copy or adaptation; and
- (d) if any person with a print disability to whom a copy is provided is required to pay for the copy, the payment required is no higher than a sum consisting of the cost of the production of the copy and a reasonable contribution to the general expenses of the authorized body, with no element of profit.

(3) An unauthorized body may copy a work contained in an electronic medium for the purposes of converting the work to an accessible format.

(4) Circumvention of a technological protection measure for the purposes referred to in subsection (1), shall not be treated as a commission of an offence or infringement of any copyright in the work.

(5) In this section, a person has a print disability if that person—

- (a) is blind;
- (b) suffers from severe impairment of his sight;
- (c) is unable to hold or manipulate printed material;
- (d) is unable to focus or move his eyes; or
- (e) suffers any other disability with respect to visual perception.

65B.—(1) A person with a hearing disability, an authorized body or an organization acting on that person's behalf and approved for that purpose by an authorized body, may, without infringing any copyright in the work—

Hearing
disabled.
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- (a) translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a hearing disability; or
- (b) perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a hearing disability.

(2) In this section a person has a hearing disability if that person—

- (a) suffers from severe or profound deafness; or
- (b) is not able to discriminate speech in a meaningful way, from other sounds.

Exceptions Relating to Public Administration

66.—(1) Copyright in a work is not infringed by anything done for the purposes of parliamentary or judicial proceedings, or, subject to subsection (3), for the purposes of reporting such proceedings.

Parlia-
mentary
and judicial
proceed-
ings and
statutory
inquiries.

(2) Copyright in a work is not infringed by anything done for the purposes of the proceedings of a statutory inquiry or, subject to subsection (3), for the purposes of reporting any such proceedings held in public.

(3) The provisions of subsections (1) and (2) relating to the reporting of proceedings shall not be construed as authorizing the copying of a work which is itself a published report of the proceedings.

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

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

Public
records.

67. Where any protected work or a reproduction of any such work is comprised in any public record (as defined in the Record Office Act) which is, by virtue of that Act under the charge of the Keeper of the Records and is open to public inspection, the copyright in the work is not infringed by the making or supplying to any person of any copy of the work by or under the direction of any officer appointed under the Record Office Act.

Designs

Design
docu-
ments
and
models.

68.—(1) It is not an infringement of any copyright in a design document or in a model that records or embodies a design for anything (except an artistic work or a typeface) to make an article to the design or to copy an article made to the design.

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

(3) 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; and

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

69.—(1) Where an artistic work has been exploited by or with the licence of the copyright owner by—

Where design derived from artistic work is exploited.

- (a) making by an industrial process articles falling to be treated under this Act as copies of the work; and

- (b) marketing such articles in Jamaica or elsewhere,

then, after end of the period of twenty-five years from the end of the calendar year in which such articles are first marketed, a person may, without infringing copyright in the work, copy the work by making articles of any description or by doing anything for the purpose of making articles of any description, or by doing anything in relation to articles so made.

(2) Where only part of an artistic work is exploited in the manner described in subsection (1), then, the provisions of that subsection apply only in relation to that part.

(3) The Minister may by order make provision—

- (a) as to the circumstances in which an article or any description of article is to be regarded for the purposes of this 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.

(4) In this section—

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

Exceptions Relating to Works in Electronic Form

70.—(1) Where a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work or to adapt it or to make copies of an adaptation in connection with his use of it, then, in the absence of any express terms—

Transfer of works in electronic form.

- (a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer or 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.

(2) Any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall, after the transfer, be treated as an infringing copy for all purposes.

(3) Subsections (1) and (2) apply where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

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

*Miscellaneous Exceptions Relating to Literary,
Dramatic, Musical and Artistic Works*

Anonymous
and pseudony-
mous literary,
etc. works.

71.—(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, or in pursuance of an arrangement made at a time when—

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

(2) For the purposes of this section—

- (a) efforts undertaken to ascertain the identity or locate an author, referred to in subsection (1), shall be documented; and
- (b) without prejudice to the adequacy of any other form of effort to ascertain the identity of the author, reasonable inquiry shall be deemed to have been made, where a notice seeking to ascertain the location or identity of the author has been published electronically or otherwise in newspaper in island-wide circulation in Jamaica or other publicly available medium.

(3) Where an act referred to in subsection (1) is done for profit, or is not governed by the other provisions of this Part, and the author is located or identified no later than six years after the end of the calendar year in which the act takes place, the copyright owner shall be entitled to receive equitable remuneration for the use made of the work.

(4) Where there is no agreement as to equitable remuneration payable pursuant to subsection (3), an application for a determination of the equitable remuneration payable, may be made to the Copyright Tribunal or to a court of competent jurisdiction.

(5) Subsection (1)(b)(ii) does not apply in relation to work in which copyright originally vested in an international organization by virtue of section 146 and in respect of which an order under that section specifies a copyright period longer than fifty years. 13/2015
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(6) In relation to work of joint authorship— 13/2015
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- (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 subsection (1)(b)(ii) to the author having died shall be construed as a reference to all the authors having died.

Use of
notes of
recordings
of spoken
word.

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

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

it 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, providing the conditions specified in subsection (2) are met.

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

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

Reading or
recitation
in public.

73.—(1) The reading or recitation in public of any reasonable extract from a published literary or dramatic work is not an infringement of copyright in the work, if 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, by virtue of subsection (1), does not infringe copyright in the work.

74.—(1) This section applies to—

(a) buildings;

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

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

(a) making a graphic work representing it;

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

(c) broadcasting or including in a cable programme service a visual image of it.

(3) The copyright of such a work is not infringed by the issue to the public of copies, or the broadcasting or inclusion in a cable programme service, of anything whose making was, by virtue of this section, not an infringement of copyright.

75. Anything done for the purposes of reconstructing a building does not infringe any copyright in the building or in any drawings or plans in accordance with which the building was constructed by or with the licence of the copyright owner.

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

*Miscellaneous Exceptions Relating to Sound
Recordings, Films and Computer Programs*

77. Where sound recordings have, with the licence or consent of the owner of the copyright in the work been previously made in, imported into or distributed in Jamaica for the purposes of retail sale, then any person may after the expiry of the period of four months immediately following

Represent-
ation of
artistic
works on
public
display.

Recon-
struction
of buildings.

Subsequent
work by
same artist.

Making etc.,
of recordings
of musical
work
previously
made or
imported.
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S. 17.

upon the date of the first authorized distribution in Jamaica of such recordings for retail sale, and without first obtaining the licence or consent of the owner of the copyright in the work, make or authorize the making of sound recordings of it if such person—

- (a) intends to sell the recordings by retail, or to supply them for the purpose of being sold by retail by another person, or intends to use them for making other sound recordings which are to be so sold or supplied;
- (b) pays royalties calculated at the prescribed rate; and
- (c) complies with such conditions relating to notice, method and time of payment, administration of royalties paid and other matters, as may be prescribed,

and any person who makes or authorizes the making of sound recordings pursuant to this subsection shall not make or authorize the making of any alterations in, or omissions from, the work unless sound recordings of that work containing similar alterations or omissions have been previously made by or with the licence or consent of the owner of the copyright or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the sound recording in question.

Rental of
sound re-
cordings,
etc.

78.—(1) The Minister may by order, subject to negative resolution, provide that in such cases as may be specified in the order, the rental to the public of copies of sound recordings, films or computer programs shall be treated as licensed by the copyright owner subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) An order under subsection (1) shall not apply if, or to the extent that, there is a licensing scheme certified under section 102 for the purposes of this section providing for the grant of licences.

(3) An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies rented, the person renting or the circumstances of the rental.

(4) Copyright in a computer program is not infringed by the rental of copies to the public after the end of the period of fifty years from the end of the calendar year in which copies of it were first issued to the public in electronic form.

(5) Nothing in this section affects any liability under section 31 in respect of the rental of infringing copies.

79. 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 organization if—

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

Playing of sound recording for purposes of charitable organizations.

Miscellaneous Exceptions Respecting Broadcasts and Cable Programmes

80.—(1) This section applies where by virtue of a licence or assignment of copyright a person is authorized to broadcast from a place in Jamaica or a specified country or to include in a cable programme service sent from Jamaica or a specified country—

Incidental recording for purposes of broadcast or cable programme.

- (a) a literary, dramatic or musical work, or an adaptation of such a work;
- (b) an artistic work; or
- (c) a sound recording or film.

(2) The person referred to in subsection (1) shall, by virtue of this section, be treated as licensed by the owner of the copyright in the work to do or authorize any of the following for the purposes of the broadcast or cable programme—

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

(3) A licence under subsection (2) is subject to the following conditions—

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

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

- (a) for the purposes of any use in breach of the condition mentioned in subsection (3) (a); and
- (b) for all purposes after that condition or the condition mentioned in subsection (3) (b) is breached.

81.—(1) Copyright is not infringed by the making or use by a prescribed broadcasting organization, for the purpose of maintaining supervision and control over programmes and advertisements broadcast by that organization, of recordings of those programmes and advertisements.

Recordings
of broad-
casts
for pro-
gramme
control.

(2) Copyright is not infringed by the making or use by the Broadcasting Commission of recordings of programmes in connection with and for the purpose of carrying out its functions under the Broadcasting and Radio Rediffusion Act.

82.—(1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any copyright in the broadcast or cable programme or in any work included in it.

Recording
for
archival
purposes.

(2) In subsection (1) “designated” means designated by the Minister, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

82A.—(1) An authorized body may copy a work contained in electronic form for archival and preservation purposes.

Authorized
body may
copy a work
in electronic
form.
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(2) Circumvention of a technological protection measure for the purposes referred to in subsection (1), shall not be an offence or an infringement of any copyright in the work.

83. Where a literary, dramatic or musical work or film is broadcast with the licence of the copyright owner from a place in Jamaica or a specified country, any person may, without obtaining the licence of the copyright owner, incorporate the work (by means of the reception of the broadcast) in a cable programme service:

Reception
and re-
transmis-
sion of
broadcast
in cable
programme
service.

Provided that—

- (a) the transmission by the cable programme service — takes place simultaneously with the reception of the broadcast; and
- (b) the programme in which the literary, dramatic or musical work or film is incorporated is transmitted without alteration of any kind; and
- (c) the copyright owner shall be entitled to receive from the person providing the cable programme service, equitable remuneration in respect of the transmission, to be fixed in default of agreement by the Tribunal,

and for the purposes of this subsection, an alteration to a programme includes the addition thereto of new material not contained in the programme as broadcast, or the omission from the transmission of any material contained in the programme as broadcast; and the term “material” includes a commercial advertisement.

Carrier and service providers not deemed to infringe copyright work, *etc.*
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S. 19.

83A.—(1) A carrier or service provider shall not be deemed to have infringed the copyright in any work by making a copy thereof which is incidental to the data transmission functions of the carrier or provider.

(2) A carrier or service provider shall not be deemed to have authorized, permitted or facilitated an infringement of copyright solely because another person uses a facility operated by the carrier, or specified services provided by the service provider, to infringe copyright.

Recording for purposes of time shifting.

84. The making for private and domestic use of a recording of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at a

more convenient time does not infringe any copyright in the broadcast or cable programme or in any work included in it.

Adaptations

85. An act which by virtue of this Part 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. Adaptations.

Prescribed Exceptions

86.—(1) Subject to the provisions of this section, the Minister may, by order, subject to negative resolution, provide that the copyright in a work of the description or category specified in the order is not infringed where, in relation to such work, such acts as are specified in the order are done in the circumstances so specified. Power of Minister to prescribe exception to infringement.

(2) The Minister shall not make an order under subsection (1) unless he is satisfied that the acts specified in the order in relation to the work—

- (a) are necessary in the public interest in connection with an event of national importance;
- (b) would not conflict with the normal exploitation of the work; and
- (c) would not unreasonably prejudice the legitimate interest of the owner of the copyright in the work.

(3) An order made under subsection (1) shall make provision for the payment of equitable remuneration to the copyright owner to be determined, in default of agreement, by the Copyright Tribunal; and such order may

contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving effect to the order.

PART VII

COPYRIGHT LICENSING

Preliminary

Interpre-
tation for
purposes
of Part.

87.—(1) In this Part—

“licence” means any licence that is issued or offered by a licensing body authorizing, in relation to works in which copyright subsists, the doing of any of the acts restricted by copyright;

“licensing body” means a society or other organization which has as its main object or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of licences, and whose objects include the granting of licences covering works of more than one author, and that has obtained a certificate of registration in accordance with section 87A,

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S. 20.

“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 licences; and

(b) the terms on which licences would be granted in those classes of case,

and for this purpose a “scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) References in this Part to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only—

- (a) a single collective work or collective works of which the authors are the same; or
- (b) works made by, or by employees commissioned by, a single individual, firm, company or group of companies.

(3) For the purpose of subsection (2) “group” in relation to a company means that company and—

- (a) any other company which is its holding company or subsidiary;
- (b) any other company which is a subsidiary of the holding company;
- (c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b); and
- (d) any company which is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c).

87A.—(1) No person shall carry on the activity of negotiating or granting of licences on behalf of owners of copyright unless that person is a licensing body, holding a certificate of registration.

Registration
of licensing
bodies.
13/2015
S. 21.

(2) Subsection (1) shall not apply where any activity therein referred to is carried on by a person acting as an authorized agent for one author and for no other.

(3) A society or other organization that intends to carry on operations as a licensing body, shall apply to the Executive Director in the form and manner prescribed, for a certificate of registration, and submit the prescribed fee.

(4) The Executive Director shall not register more than one licensing body at the same time to carry on operations in respect of the same class of rights, unless that Executive Director is satisfied that the registration of more than one such body is justified by market conditions and is in the public interest.

(5) For greater certainty and in furtherance of the functions conferred by the Jamaica Intellectual Property Office Act, the Executive Director shall have the functions in relation to the grant, refusal, suspension or revocation of a certificate issued under this Part.

(6) Any person who contravenes subsection (1) commits an offence and shall be liable on summary conviction before a Resident Magistrate—

- (a) in the case of an individual, to a fine not exceeding one million dollars or in default of payment thereof to imprisonment for a term not exceeding six months; or
- (b) in the case of a body corporate, to a fine not exceeding one million dollars.

Owner of a copyright in a work shall continue to have the right to grant a licence.
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87B. For greater certainty and in furtherance of the functions conferred by the Jamaica Intellectual Property Office Act, nothing in section 87A shall restrict the right of the owner of the copyright in a work or of related rights in respect of a work, to grant a licence in respect of the work in a manner that is not inconsistent with any of the contractual arrangements, if any, that the owner may have with a licensing body.

Licensing schemes to which sections 89 to 94 apply.

88. The provisions of sections 89 to 94 apply to licensing schemes of the following descriptions—

- (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) copying the work;
 - (ii) performing, playing or showing the work in public; or
 - (iii) broadcasting the work or including it 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.

*References and Applications Respecting
Licensing Schemes*

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

Reference
of pro-
posed
licensing
scheme.

(2) The Tribunal shall first decide whether to entertain the reference and may decline to do so on the ground that the reference is premature.

(3) Where the Tribunal decides to entertain the reference it shall consider the matter referred and make such

order, either confirming or varying the proposed scheme either generally or so far only as it relates to cases of the description to which the reference relates, as the Tribunal thinks reasonable in the circumstances.

(4) An order may be made under subsection (3) so as to be in force indefinitely or for such period as the Tribunal may determine.

Reference
of existing
licensing
scheme.

90.—(1) Where during the operation of a licensing scheme a dispute arises between the operator of the scheme and—

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

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

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

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

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

Further re-
ference
of scheme.

91.—(1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under section 89 or 90, 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 organization claiming to be representative of such persons,

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

(2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases—

- (a) within twelve months from the date of the order on the previous reference; or
- (b) if the order was made so as to be in force for fifteen months or less, until the last three months before the expiry of the order.

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

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

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

92.—(1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do

Applica-
tion for
grant of
licence in
connection
with licens-
ing scheme.

so within a reasonable time after being asked, 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 a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted; or
- (b) proposes terms for a licence which are unreasonable,

may apply to the Copyright Tribunal.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes 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 Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

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

93.—(1) Where the Copyright Tribunal has made an order under section 92 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or

Applica-
tion for
review of
order as to
entitle-
ment to
licence.

the original applicant may apply to the Tribunal to review its order.

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

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

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

94.—(1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal under section 89 or 90 shall be in force, or as the case may be, remain in operation so far as it relates to the description of case in respect of which the order is made, so long as the order remains in force.

Effect of
order of
Tribunal
as to
licensing
scheme.

(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 the copyright in question in accordance with the scheme.

(3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, shall have effect from a date before that on which it is made, not being a date earlier than the date on which the reference was made or, where the scheme came into operation after the reference was made, not being a date earlier than the date on which the scheme came into operation; but no such direction may be made where subsection (5) applies.

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

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and
- (b) the reference in paragraph (a) of subsection (2) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

(5) An order of the Tribunal under section 89 or 90 made with respect to a scheme which is certified for any purpose under section 102 has effect, so far as it varies the scheme by reducing the charge payable for licences, from the date on which the reference was made to the Tribunal.

(6) Where the Tribunal has made an order under section 92 and the order remains in force, the person in whose favour the order is made shall, if he satisfies the conditions specified in subsection (7), be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

(7) The conditions referred to in subsection (6) are that the person mentioned in that subsection shall—

- (a) pay to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, give an undertaking to pay the charges when ascertained; and
- (b) comply with the other terms specified in the order.

*References and Applications Respecting Licences
and Licensing Bodies*

95. Sections 96 to 99 apply to the following descriptions of licence granted by a licensing body otherwise than in pursuance of a licensing scheme —

Licences to which sections 96 to 99 apply.

- (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 authorize—
 - (i) copying the work;
 - (ii) performing, playing or showing the work in public; or
 - (iii) broadcasting the work or including it in a cable programme service;
- (b) any licence relating 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.

Reference
to Tribunal
of proposed
licence.

96.—(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 Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.

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

Reference
to Tribunal
of expiring
licence.

97.—(1) A licensee under a licence which is due to expire by effluxion of time or as a result of notice given by the licensing body, may apply to the 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 Tribunal shall remain in operation until proceedings on the reference are concluded.

(4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.

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

98.—(1) Where the Copyright Tribunal has made an order under section 96 or 97, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.

Application for review of order as to licence.

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

- (a) within twelve months from the date of the order or of the decision on a previous application under this 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 date.

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

99.—(1) Where the Copyright Tribunal has made an order under section 96 or 97 and the order remains in force, the person entitled to the benefit of the order shall, if he satisfies the conditions specified in subsection (2), be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

Effect of order of Tribunal as to licence.

(2) The conditions referred to in subsection (1) are that the person mentioned in that subsection shall—

- (a) pay to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, give an undertaking to pay the charges when ascertained; and
- (b) comply with the other terms specified in the order.

(3) The benefit of the order may be assigned—

- (a) in the case of an order under section 96, if assignment is not prohibited under the terms of the Tribunal's order; and
- (b) in the case of an order under section 97, if assignment was not prohibited under the terms of the original licence.

(4) The Tribunal may direct that an order under section 96 or 97, or an order under section 98 varying such an order, so far as it varies the amount of charges payable, shall have effect from a date before that on which it was made, not being a date earlier than the date on which the reference or application was made or, where a licence was granted or was due to expire after the reference was made, not being a date earlier than the date on which the licence was granted or, as the case may be, was due to expire.

(5) 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 the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

Supplementary

Regulations may prescribe factors to be taken into account.

100. Regulations made under section 150 may prescribe the matters which the Copyright Tribunal shall take into account on a reference or application made under this Part in respect of any class or classes of case.

101.—(1) An application to settle the royalty or other sum payable in pursuance of section 78 may be made to the Copyright Tribunal by the copyright owner or the person claiming to be treated as licensed by him.

Royalty payable for rental of sound recording, film, etc.

(2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Tribunal to vary the order and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under subsection (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.

(5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

102.—(1) On the application of any person operating or proposing to operate a licensing scheme for the purposes of sections 58, 78 and such other provisions as may be prescribed, the Minister shall by order certify the scheme if he is satisfied that it—

Ministerial order in relation to licensing scheme.

(a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences; and

(b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.

(2) The scheme shall be scheduled to the order and the scheme shall come into operation for the purposes of

sections 58, 78 or such other provisions as may be prescribed—

- (a) on such date, being not less than eight weeks after the order is made, as may be specified in the order; or
- (b) if the scheme is the subject of a reference under section 89, any later date on which the order of the Copyright Tribunal under that section comes into force or the reference is withdrawn.

(3) A variation of the scheme is not effective unless the order is amended by the Minister; and the Minister shall make the amendment in the case of a variation ordered by the Copyright Tribunal on a reference under section 89, 90 or 91 and may do so in any other case if he thinks fit.

(4) The Minister may, by order, revoke an order made under subsection (1) if it appears to him that the scheme to which the order relates is no longer being operated according to its terms, and shall revoke the order if the scheme ceases to be operated.

PART VIII

THE COPYRIGHT TRIBUNAL

Establishment
of Copyright
Tribunal,
Second
Schedule.
13/2015
S. 22.

103.—(1) There is hereby established for the purposes of this Act a tribunal to be called the Copyright Tribunal.

(2) The provisions of the Second Schedule shall have effect as to the constitution of the Tribunal and otherwise in relation thereto.

Jurisdic-
tion of
Tribunal.

104.—(1) The functions of the Tribunal shall be—

- (a) to hear and determine—
 - (i) any matter referred to it pursuant to any provision of Part VII relating to a licensing scheme or licence;

- (ii) an application under section 101 to settle the royalty or other sum payable for rental of a sound recording, film or computer program;
- (b) to keep under review the prescribed rate of royalty payable to a performer in connection with an adaptation of an original recording of his performance; and
- (c) to make recommendations to the Minister on the rate of royalties or other payments payable in respect of the use or presentation in such national cultural event as he may by order designate, of any works or performance in which copyright or other rights subsist.

(2) In relation to its functions under subsection (1) (b), the Tribunal may from time to time on its own initiative and shall, on a request made in writing by the Minister, enquire into the appropriateness of such rate and make such recommendations to the Minister with respect thereto as it thinks fit.

105.—(1) The Minister may make regulations relating to proceedings before the Copyright Tribunal and provisions shall be made in such regulations—

Regulations
relating
to pro-
ceedings of
Tribunal.

- (a) prohibiting the Tribunal from entertaining a reference under section 89, 90 or 91 by a representative organization unless the Tribunal is satisfied that the organization is reasonably representative of the class of persons which it claims to represent;
- (b) specifying the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any person or organization which the Tribunal is satisfied has a substantial interest in the matter; and
- (c) requiring the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the regulations may provide.

(2) The regulations may prescribe any matter incidental to or consequential upon any appeal from the Tribunal under section 106.

(3) Regulations made under section shall be subject to negative resolution.

Appeal on
point of
law.

106.—(1) An appeal lies on any point of law arising from a decision of the Copyright Tribunal to the Supreme Court.

(2) Regulations made under section 105 may limit the time within which an appeal may be brought.

Recognition of Rights

Recognition
of moral
rights of
performers.
13/2015
S. 23.

106A.—(1) A performer shall have the right with respect to live aural performances or performances fixed in phonograms—

- (a) to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; or
- (b) to object to any distortion, mutilation or other modification of his performances that is prejudicial to his reputation.

(2) The rights conferred under this section shall exist independently of the rights conferred under section 108.

PART IX

RIGHTS IN PERFORMANCES

Confer-
ment of
rights in
perfor-
mances.

107.—(1) By virtue of, and subject to the provisions of this Part, rights are conferred on—

- (a) a performer, requiring his consent to the exploitation of his performance; and
- (b) a person having recording rights in relation to a performance, requiring his consent to the making of a recording of that performance.

(2) The rights conferred by this Part are independent of—

- (a) any copyright in or moral rights relating to any work used or performed in the performance; and
- (b) any other right or obligation arising otherwise than under this Part.

Performers' Rights

108.—(1) A performer's rights are infringed by a person who, without the performer's consent—

Consent
required for
recording or
live
transmission
of
performance.
13/2015
S. 24.

- (a) fixes in a recording, otherwise than for his private and domestic use, the whole or any substantial part of a qualifying performance;
- (b) copies a recording, otherwise than for his private and domestic use, of the whole or any substantial part of a qualifying performance;
- (c) sells, rents or distributes to the public, or otherwise transfers ownership of any such recording or copies thereof, that is not already subject to a sale, rental distribution or other transfer authorized by the performer; or
- (d) broadcasts live, or includes live in a cable programme service or otherwise communicates to the public, the whole or any substantial part of a qualifying performance.

(2) A performer's rights are not infringed by—

- (a) the making of copies of a recording of a qualifying performance for the purpose of archiving, restoring or preserving the work;
- (b) the making of copies which are transient, temporary or incidental to the authorized performance of the work; or
- (c) the incidental storage and copying of a recording of the performance in the process of an authorized transmission, thereof.

(3) In any action for infringement of a performer's rights under subsection (1), 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.

Infringe-
ment of
performer's
rights by
use of
recording
made with-
out consent.

109. 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 made without the performer's consent and that person knows or has reason to believe that it was so made.

Consent and
royalty re-
quired for
adaptation
of recording.

110.—(1) A performer's rights are infringed by a person who, without his consent and payment of royalty at the prescribed rate, uses an original recording of a qualifying performance (whether authorized or not) for the purpose of making an adaptation of the recording.

(2) In subsection (1) "an adaptation of the recording" means a recording in which the performance is accompanied by lyrics or music not contained in the original recording.

Infringe-
ment of
performer's
rights by
importing,
possessing,
etc. illicit
recording.

111.—(1) A performer's rights are infringed by a person who, without his consent—

- (a) imports into Jamaica otherwise than for his private and domestic use; or
- (b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes,

a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement of a performer's rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the remedy in damages available against him in respect of the infringement is an amount 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

112.—(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent, makes a recording of the whole or any substantial part of the performance otherwise than for his private and domestic use.

Consent required for recording of performance subject to exclusive contract.

(2) In an action for infringement of those rights brought by virtue of 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.

113.—(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent—

Infringement of recording rights by use of recording made without consent.

(a) shows or plays in public the whole or any substantial part of the performance; or

(b) broadcasts or includes in a cable programme service the whole or any substantial part of the performance,

by means of a recording which was, and which that person knows or has reason to believe was, made without the appropriate consent.

(2) The reference in subsection (1) to the “appropriate consent” is to the consent of 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).

114.—(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent—

Infringement of recording rights by importing, proceedings, etc., illicit recording.
13/2015
S. 25(a),(b).

(a) imports into Jamaica otherwise than for his private and domestic use;

(b) in the course of a business, possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes;

(c) rents or distributes an unauthorized recording of the whole or a substantial part of the performance;

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S. 25(c).

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S. 25(c).

- (d) makes the whole or a substantial part of the performance available to the public by means of a recording made accessible, or communicated to the public by means of any form of technology that allows a member of the public to access the performance from a place and at a time chosen by the member of the public; or

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S. 25(c).

- (e) copies a recording of the whole or a substantial part of the performance stored by means of any electronic retrieval system, on electronic devices or utilizing any other storage medium or device,

a recording of the performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement of those rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the remedy in damages available against him in respect of the infringement is an amount 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 Infringement

Permitted
acts in re-
lation to
perfor-
mances.

115. Notwithstanding the rights in performances conferred by this Part—

- (a) any act done in relation to a performance or recording in the circumstances specified hereunder does not constitute an infringement of the rights; and
(b) the Copyright Tribunal may give consent on behalf of a performer in the circumstances specified in section 128.

Fair deal-
ing for
criticism,
etc.

116. 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 this Part, and the provisions of section 54 shall, with the necessary

modifications, apply in determining whether or not an act constitutes fair dealing.

117. The rights conferred by this Part are not infringed—

- (a) by the incidental inclusion in a sound recording, film, broadcast or cable programme of a performance or recording;
- (b) by anything done in relation to copies of, or the playing, showing, broadcasting or inclusion in a cable programme service of, anything whose making was not an infringement of those rights, by virtue of paragraph (a),

Incidental inclusion of performance or recording.

and for the purposes of this section, 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.

118.—(1) The rights conferred by this Part are not infringed by the copying of a recording of a performance in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.

Acts done to recording or performance for purposes of instruction, etc.

(2) The rights conferred by this Part are not infringed—

- (a) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination; or
- (b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

(3) Where a recording which would otherwise be an illicit recording is made in accordance with this section but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, for all subsequent purposes.

(4) In subsection (3) and in section 119 (2) “dealt

with” means sold or let for hire, or offered or exposed for sale or hire.

Recording of broadcasts and cable programmes by educational establishments.

119.—(1) A recording of a broadcast or cable programme or a copy of such recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing any of the rights conferred by this Part 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 section but is subsequently dealt with (as defined in section 118 (4)) it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, for all subsequent purposes.

Acts done to performance or recording for Parliamentary proceedings, etc.

120. The rights conferred by this Part are not infringed by anything done for the purposes of—

- (a) parliamentary or judicial proceedings or the reporting of such proceedings; or
- (b) the proceedings of a statutory inquiry or the reporting of such proceedings held in public.

Transfer of recording of performance in electronic form.

121.—(1) Where a recording of a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to make further recordings in connection with his use of the recording, then, in the absence of any express terms—

- (a) prohibiting the transfer of the recording by the purchaser;
 - (b) imposing obligations which continue after a transfer;
 - (c) prohibiting the assignment of any consent;
 - (d) terminating any consent on a transfer; or
 - (e) 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 this Part, 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.

(2) Subsection (1) applies where the original purchased recording is no longer usable and what is transferred is a further copy used in its place.

(3) This section also applies on a subsequent transfer, with the substitution for references in subsection (1) to the purchaser of references to the subsequent transferor.

(4) This section does not apply in relation to a recording purchased before the 1st September, 1993.

122.—(1) Where a recording of the reading or recitation of a literary work is made for the purpose of—

Use of recordings of spoken words.

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

it is not an infringement of the rights conferred by this Part to use the recording (or to copy the recording and use the copy) for that purpose, provided the conditions specified in subsection (2) are met.

(2) The conditions referred to in subsection (1) 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.

Playing
sound re-
cording as
part of
activities
of chari-
table or-
ganization,
etc.

123. It is not an infringement of any right conferred by this Part to play a sound recording as part of the activities of, or for the benefit of, a club, society or other organization if—

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

Incidental
recording
for pur-
poses of
broadcast
or cable
programme.

124.—(1) Subject to subsection (2), a person who proposes to broadcast a recording of a performance, or to include a recording of a performance in a cable programme service, in circumstances not infringing the rights conferred by this Part, shall be treated as having consent for the purposes of this Part for the making of a further recording for the purposes of the broadcast or cable programme.

(2) The consent given under subsection (1) is subject to the following conditions—

- (a) the further recording shall not be used for any other purpose; and
- (b) such recording shall 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 purposes of any use in breach of the condition mentioned in paragraph (a) of subsection (2); and
- (b) for all purposes after that condition or the condition mentioned in paragraph (b) of subsection (2) is breached.

125.—(1) The rights conferred by this Part are not infringed by the making or use by a prescribed broadcasting organization for the purpose of maintaining supervision and control over programmes broadcast by that organization, of recordings of those programmes.

Recordings for supervision and control of programmes.

(2) The rights conferred by this Part are not infringed by the making or use of recordings by the Broadcasting Commission in connection with and for the purpose of carrying out its functions under the Broadcasting and Radio Re-diffusion Act.

126.—(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 this Part in relation to a performance or recording included in the broadcast or cable programme.

Recording of broadcast or cable programme for archival purposes.

(2) In this section “designated” has the meaning assigned to that expression in section 82 (2).

127.—(1) Subject to the provisions of this section, the Minister may, by order, subject to negative resolution, provide that the rights conferred by this Part are not infringed by the doing of such acts in relation to the performance as are specified in the order, where such acts are done in the circumstances so specified.

Order excepting acts from infringing right under this Part.

(2) The Minister shall not make an order under subsection (1) unless he is satisfied that the acts specified in the order—

- (a) are necessary in the public interest in connection with an event of national importance;
- (b) would not conflict with the normal exploitation of the performance; and

- (c) would not unreasonably prejudice the legitimate interest of the performer or any person having rights in the performance.

(3) An order made under subsection (1) shall make provision for the payment of equitable remuneration to any person having rights conferred by this Part to be determined, in default of agreement, by the Copyright Tribunal; and such order may contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving effect to the order.

Tribunal
may con-
sent on be-
half of
performer.

128.—(1) Subject to the provisions of this section, the Copyright Tribunal may, on the application of a person who wishes 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 Tribunal has effect as consent of the performer for the purposes of—

- (a) the provisions of this Part relating to performers' rights; and
- (b) paragraph (a) of subsection (3) of section 134,

and may be given subject to such conditions as the Tribunal may specify in the order.

(3) The 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 regulations made under section 105 or as the Tribunal may in any particular case direct.

(4) The 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 Tribunal may draw such inferences as it thinks fit.

(5) In any case the Tribunal shall take into account the following factors—

- (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 purposes for which, the original recording was made.

(6) Where the 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 in Performances; Consent

129. The rights conferred by this Part continue to subsist in relation to a performance until the end of the period of ninety-five years from the end of the calendar year in which the performance was fixed or, in the absence of such performance being fixed, from the end of the calendar year in which the performance takes place.

Duration
of rights
in perfor-
mances.
13/2015
S. 26.

130.—(1) The rights conferred by this Part are not assignable or transmissible, except to the extent that performers' rights are transmissible as provided in this section.

Transmission
of rights in
performances.

(2) On the death of a person entitled to performers' rights—

- (a) the rights pass to such person as he may by testamentary disposition 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 by virtue of 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) are without prejudice to any rights conferred by this Act on a person to whom has been assigned the benefit of an exclusive recording contract or licence to make recordings of a performance.

(5) Any damages recovered by personal representatives by virtue of 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.

131.—(1) Consent for the purposes 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 prior consent given by a person through whom he derives his rights under the exclusive recording contract or licence in question, 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 of Rights
in Performances*

132. 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.

Infringe-
ment
actionable
as breach of
statutory duty.

133.—(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 performers' rights or recording rights under this Part 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 the court may direct.

Order for
delivery up
of illicit
recording
in civil
proceedings.

(2) An application shall not be made after the end of the period specified in section 138; and the court shall not make an order under this section unless it also makes an order under section 137 for the disposal of the recording, or it is of the opinion that there are grounds on which an order under that section could be made.

(3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 137 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.

Offences

134.—(1) A person commits an offence who without sufficient consent—

- (a) makes for sale or hire; or
- (b) imports into Jamaica otherwise than for his private and domestic use; or
- (c) possesses in the course of a business with a view to doing any act infringing the rights conferred by this Part; or
- (d) in the course of a business—
 - (i) sells or lets for hire; or
 - (ii) offers or exposes for sale or hire; or
 - (iii) distributes,

Criminal
liability for
making,
dealing with
or using
illicit re-
cordings.

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 knows or has reason to believe that those rights are thereby infringed.

13/2015
S. 27(a).

(3) In this section “sufficient consent” means—

- (a) in the case of a qualifying performance that is not subject to an exclusive recording contract, the consent of the performer; and
- (b) in the case of a performance that is subject to an exclusive recording contract, the consent of the person having recording rights.

(4) References in this section to the person having recording rights are to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them.

13/2015
S. 27(b).

(5) No offence is committed under this section by the doing of an act which, by virtue of any provision of this Part, may be done without infringing the rights conferred by this Part.

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S. 27(b).

(6) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction before a Resident Magistrate to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years;
- (b) on conviction before a Circuit Court to a fine or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

134A.—(1) A carrier or a service provider who knowingly—

- (a) operates a facility or otherwise permits or facilitates the use of a facility by another person to infringe copyright; or
- (b) provides specified services or permits or facilitates the use of specified services to another person in order to infringe copyright,

Offence for carrier or service provider to facilitate copyright infringement, etc.
13/2015
S. 28.

commits an offence.

(2) In an action for infringement, where a person uses a facility operated by or specified services provided by a carrier or a service provider to infringe copyright, the Court may, if it thinks fit, grant an injunction against the carrier or the service provider prohibiting the conduct referred to in subsection (1).

(3) A person who commits an offence under subsection (1), shall be liable—

(a) on summary conviction before a Resident Magistrate—

- (i) in the case of an individual, to a fine not exceeding one million dollars and in default of payment thereof to imprisonment for a term not exceeding one year; or
- (ii) in the case of a body corporate, to a fine not exceeding one million dollars; or

(b) on conviction in a Circuit Court—

- (i) in the case of an individual, to a fine and in default of payment thereof to imprisonment for a term not exceeding five years; or
- (ii) in the case of a body corporate, to a fine.

Order for
delivery up
of illicit
recording
in criminal
pro-
ceedings.

135.—(1) The Court before which proceedings are brought against a person for an offence under section 134 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.

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

(a) after the end of the period specified in section 138;
or

(b) if it appears to the court unlikely that any order will be made under section 137.

(3) An appeal lies to the Court of Appeal from an order made under this section.

(4) A person to whom an illicit recording 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 137.

False repre-
sentation of
authority to
give consent.

136.—(1) It is an offence for a person to represent falsely that he is authorized by any person to give consent for the purposes of this Part in relation to a performance, unless he believes on reasonable grounds that he is so authorized.

(2) A person guilty of an offence under this section is liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

136A.—(1) A person who—

- (a) makes or imports for commercial purposes;
- (b) sells or lets for hire;
- (c) offers or exposes for sale or hire; or
- (d) advertises for sale or hire,

Unauthorized
decoders.
29/1999
S. 4.

any unauthorized decoder shall be guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(2) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for believing, that the decoder was an unauthorized decoder.

PART X**GENERAL****136B.—(1) A person who—**

- (a) makes charges for the reception of programmes included in a broadcasting or cable programme service provided from a place in Jamaica;
- (b) sends encrypted transmissions of any other description from a place in Jamaica; or
- (c) has rights in the contents of any programme referred to in paragraph (a) or any transmission referred to in paragraph (b),

Unautho-
rized re-
ception of
programmes:
rights and
remedies.
29/1999
S. 5.

has the rights and remedies specified in subsection (2).

(2) The rights and remedies mentioned in subsection (1) are—

(a) the same rights and remedies as are exercisable under section 32(1) and (2) by a copyright owner, in relation to an infringement of copyright; and

(b) are exercisable by a person referred to in subsection (1) against a person who—

(i) makes or imports for commercial purposes or sells or lets for hire, offers or exposes for sale or hire or advertises for sale or hire, any unauthorized decoder; or

(ii) without lawful authority, receives or distributes programmes from an encrypted transmission for the purpose of distributing the programmes to other persons under commercial arrangements with them.

(3) Subsection (3) of section 32 shall apply with necessary modifications in relation to proceedings for infringement of the rights conferred by this section, and accordingly the reference in that subsection to the defendant not knowing or having reason to believe that copyright subsisted in the work to which the action relates shall be construed as a reference to his not knowing or having reason to believe that his acts infringed the rights conferred by this section.

(4) The person referred to in subsection (1) also has, in relation to any unauthorized decoder, the same rights as are exercisable by a copyright owner in relation to any infringing copy, under section 33 (delivery up of certain articles).

(5) Section 137 applies with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (4).

(6) This section shall not have effect in relation to any act done before the 3rd day of September, 1999.

136C. For the purposes of sections 136A and 136B—

Definition of
terms.
29/1999.
S. 5.

“apparatus” includes any device, component or electronic data;

“decoder” means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;

“transmission” means any programme included in a broadcasting or cable programme service which is provided from a place in Jamaica; and

“unauthorized” in relation to a decoder, means a decoder which will enable encrypted transmissions to be viewed in the decoded form without—

- (a) payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for viewing those transmissions, or viewing any service of which they form part; or

(b) the authority of a person referred to in section 136B(1).

Order for disposal of infringing copy or illicit recording.

137.—(1) An application may be made to the court for—

(a) an order that an infringing copy or article delivered up in pursuance of an order under sections 33 and 48 shall be—

(i) forfeited to the copyright owner; or

(ii) destroyed or otherwise dealt with as the court may direct;

(b) an order that an illicit recording of a performance delivered up in pursuance of an order under section 133 or 135 shall be—

(i) forfeited to such person having performers' rights or recording right in relation to the performance as the court may direct; or

(ii) destroyed or otherwise dealt with as the court thinks fit; or

(c) a decision that no order under paragraph (a) or (b) should be made.

(2) In considering what order (if any) should be made, the court shall have regard to all the circumstances of the case and, in particular—

(a) where the infringement relates to copyright in a work, whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interest;

- (b) where the infringement relates to rights conferred under Part IX, whether other remedies available in an action for infringement of those rights would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

(3) Provisions shall be made by regulations as to the service of notice on persons having an interest in the infringing copy or other articles or the illicit 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 is duly given, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in an infringing copy or other article, or as the case may be, an illicit recording, the court shall make such order as it thinks just and may, in particular, direct that such copy, article or recording be sold, or otherwise dealt with, and the proceeds divided.

(5) If the court decides that no order should be made under this section, the person in whose possession, custody or control, the copy or article, or as the case may be, the recording was before being delivered up or seized is entitled to its return.

(6) References in this section to a person having an interest in a copy or other article or a recording include any person in whose favour an order could be made in respect of the copy, article or, as the case may, recording under this section.

137A.—(1) Subject to the provisions of this section, the amendments under sections 10, 11, 12, 13 and 129 made by, and the provisions of sections 13A and 13B incorporated under the Copyright (Amendment) Act, 2015, that extend the date for the expiration of copyright or other rights shall, notwithstanding anything to the contrary in this Act or any other law, be deemed

Retrospective
application.
13/2015
S. 29.

to have come into operation on the 1st day of January, 2012.

(2) Any person who during the relevant period has done any act in relation to a work or performance that had entered into the public domain prior to the doing of that act, and which would, by virtue of the application of subsection (1), otherwise be an infringement of copyright or other rights under this Act, shall not be subject to any civil or criminal liability in connection with—

- (a) that act; or
- (b) the performance of any legal obligations, whether during or after the relevant period, which arise out of any contractual arrangement entered into by the person during the relevant period in connection with that work or performance.

(3) In this section “relevant period” means the period commencing on the 1st day of January, 2012 and ending on the date of the coming into operation of the Copyright (Amendment) Act, 2015.

Period
after which
remedy or
delivery up
not available.

138.—(1) An application for an order under section 33 or 133 may not be made after the end of the period of six years from the date on which the infringing copy or article or, as the case be, the illicit recording in question was made, subject to the following provisions.

(2) If during the whole or any part of that period a person entitled to apply for an order—

- (a) is under a disability; or
- (b) is 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 a disability or, as the case may be, could with reasonable diligence have discovered those facts.

Time
limited for
prosecution.

139. No prosecution for an offence under this Act shall be commenced after the expiration of five years after the commission of the offence or one year after the discovery thereof, whatever date last occurs.

140.—(1) Subject to subsection (3) of this section and section 141, a member of the Constabulary Force of or above the rank of Inspector may, if he is satisfied that there is reasonable cause to believe that an offence against this Act is being committed, give directions to any constable authorizing him to—

Powers of
members
of Consta-
bulary
Force.

- (a) enter and search any premises or place;
- (b) stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft); or
- (c) stop and search any vehicle, in which the constable reasonably suspects there is an infringing copy of a work or an illicit recording or any article used or intended to be used for making infringing copies or illicit recordings; and
- (d) seize, remove or detain—
 - (i) any article which appears to the constable to be an infringing copy or an illicit recording or any other article which appears to him to be intended for use for making such copies or recordings; and
 - (ii) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Act.

(2) A constable to whom directions have been given under subsection (1) may—

- (a) break open any outer or inner door of any place which he is authorized by this section to enter and search;
- (b) forcibly board any vessel, aircraft or vehicle which he is authorized under this Act to stop, board and search;

- (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act;
- (d) detain any person found in any place which he is authorized under this section to search until such place has been searched;
- (e) detain any vessel or aircraft which he is authorized under this section to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;
- (f) detain any vehicle which he is authorized under this Act to stop and search until it has been searched;

(3) It shall be the duty of any constable in the execution of any directions given under subsection (1) to produce the instrument containing the directions to the owner or occupier of any premises, place, vessel or aircraft entered or vehicle stopped, pursuant to such directions if required by such owner or occupier to do so.

Restrictions
on the
entry and
search, of
domestic
premises.

141.—(1) No domestic premises shall be entered and searched pursuant to section 140 unless a magistrate has issued a warrant under subsection (2).

(2) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any domestic premises any article which may be seized, removed or detained under any provision of this Act, issue a warrant authorizing a member of the Constabulary Force not below the rank of Sergeant to enter and search the premises, and such member may call upon any constable to assist him in entering and searching the premises.

(3) In this section “domestic premises” means any premises or any part thereof, used exclusively or mainly as a dwelling.

142.—(1) Without prejudice to any other written law, any person who—

Obstruction
of members
of Constabulary
Force.

- (a) wilfully obstructs a member of the Constabulary Force in the exercise of his powers or the performance of his duties under this Act;
- (b) wilfully fails to comply with any requirement properly made to him by any such member; or
- (c) without reasonable excuse, fails to give such member any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Act,

is liable on summary conviction before a Resident Magistrate to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year.

(2) A person who, when required to give information to a member of the Constabulary Force in the exercise of his powers or the performance of his duties under this Act, knowingly gives false or misleading information to any such member is liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months.

(3) Nothing in this section shall be construed as requiring any person to give any information which may incriminate him.

143. Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager,

Offences by
bodies corporate.

secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly.

Power to
apply pro-
visions of
Act to
other
country.

144.—(1) Subject to the provisions of this section, the Minister may by order provide that in respect of any country specified in the order, any provisions of this Act so specified shall apply—

- (a) in relation to persons who are citizens or habitual residents of that country as they apply to persons who are citizens or habitual residents of Jamaica;
- (b) in relation to bodies incorporated or established under the laws of that country as they apply in relation to bodies incorporated or established under the laws of Jamaica;
- (c) in relation to literary, dramatic, musical or artistic works, sound recordings, films and editions first published in that country as they apply in relation to such works, sound recordings, films and editions first published in Jamaica;
- (d) in relation to broadcasts made from or cable programmes sent from that country as they apply in relation to broadcasts made from or cable programmes sent from Jamaica;
- (e) in relation to performances taking place in that country or given by an individual who is a citizen or habitual resident of that country, as they apply in relation to performances taking place in Jamaica or given by an individual who is a citizen or habitual resident of Jamaica;

- (f) in relation to the protection of persons who make charges for programmes included in a broadcasting or cable programme service provided in that country or an encrypted transmission sent from that country as they apply in relation to the protection of persons who make charges in relation to programmes included in a broadcasting or cable programme service provided from Jamaica or an encrypted transmission sent from Jamaica, as the case may be.

29/1999.
S. (6)(a)(ii).

(2) An order made under this section applying any provisions of this Act in relation to any country may apply that provision—

- (a) without exception or modification or subject to such exceptions and modifications as may be specified in the order;
- (b) generally or in relation to such classes of works or other classes of case as may be so specified.

(3) An order shall not be made under this section in relation any country unless—

- (a) the country is a Convention country; or
- (b) a country as to which the Minister is satisfied that provision has been or will be made under its law in respect of the class of works or (as the case may be) the performances, to which the order relates, giving adequate protection to the owners of copyright under this Act or, as the case may be, to Jamaican performances as defined in section 145(4); or

29/1999
S.6(b)(ii).

- (c) in relation to the rights and remedies provided by sections 136A and 136B, the country is a country as to which the Minister is satisfied that provision has been or will be made under its law giving adequate protection to persons making charges for programmes included in a broadcasting or cable programme service provided from Jamaica or an encrypted transmission sent from .

;

s a

country which is a party to a Convention relating to copyright or performers' rights, or the distribution of programme-carrying signals transmitted by satellite, as may be appropriate, to which Jamaica is also a party.

Denial of
copyright or
rights in
performances.

145.—(1) If it appears to the Minister that the laws of a country fail to give adequate protection to Jamaican works to which this section applies or to Jamaican performances, or fail to give adequate protection in the case of one or more classes of such works or performances, (whether the lack of protection relates to the nature of the work or performance or the nationality, citizenship or country of its author or performer or all of those matters) the Minister may, by order, make provision in relation to that country in accordance with subsection (2).

(2) An order made for the purposes of this section shall designate the country concerned and may provide either generally or in relation to such classes of case as are specified in the order, that copyright shall not subsist in works first published, or, as the case may be,

that rights in performances shall not subsist in performances first given, after a date specified in the order (which may be a date before the 1st September, 1993) if, at the time of the first publication of those works or the giving of the performance, as the case may be, the authors of the works or the performers were or are—

- (a) citizens or nationals of that country, not being at that time persons whose habitual residence is in Jamaica or a specified country (excluding the country concerned); or
- (b) in the case of works, bodies incorporated or established under the laws of that country.

(3) The Minister shall, in making an order under this section, have regard to the nature and extent of the lack of protection for Jamaican works or Jamaican performances in consequence of which the order is being made.

(4) This section applies to literary, dramatic, musical and artistic works, sound recordings and films, and for the purposes of this section—

“Jamaican performances” means—

- (a) performances given by individuals who are citizens or habitual residents of Jamaica; or
- (b) performances that take place in Jamaica;

“Jamaican works” means works of which the author was a qualified person at the material time within the meaning of section 7 (3).

145A.—(1) If it appears to the Minister that the laws of a country fail to give adequate protection to persons who make charges for programmes included in a broad-

Denial of
protection:
programmes
and encrypted
transmissions.
29/1999.
S. 7.

casting or cable programme service provided from Jamaica, or an encrypted transmission sent from Jamaica, as the case may be, the Minister may act in accordance with subsection (2) in relation to that country.

(2) The Minister may, having regard to the nature and extent of the lack of protection, by order designate the country concerned and may provide either generally or in relation to such classes of case as are specified in the order, that no protection shall be given under this Act to persons who make charges for programmes included in a broadcasting or cable programme service provided from that country or an encrypted transmission sent from that country, as the case may be.

Inter-
national
organiza-
tions.

146.—(1) This section applies to international organizations as to which the Minister by order has declared that it is expedient that this section should apply.

(2) Where an original literary, dramatic, musical or artistic work is first published by or under the direction or control of an international organization to which this section applies in such circumstances that copyright would not, except by virtue of this subsection, subsist in the work immediately after the first publication thereof, and—

- (a) the work is so published in pursuance of an agreement with the author which does not reserve to the author the copyright, if any, in the work; or
- (b) the work was made in such circumstances that, if it had been first published in Jamaica, the organization would have been entitled to the copyright in the work,

then, copyright shall subsist in the work by virtue of this section and the organization shall be first owner of that copyright.

(3) Copyright of which an international organization is first owner by virtue of this section shall subsist until the end of the period of fifty years from the end of the calendar year in which the work was made or such longer period as may be specified by the Minister, by order, for the purpose of complying with the international obligations of Jamaica.

(4) An organization to which this section applies which otherwise has not, or at some material time otherwise has not, the legal capacities of a body corporate shall have, and shall be deemed at all material times to have had, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright.

147.—(1) For the purposes of this Act, the territorial sea and the exclusive economic zone of Jamaica shall be treated as part of Jamaica.

Territorial waters and exclusive economic zone.

(2) This Act applies to things done in the exclusive economic zone as it applies to things done in Jamaica.

(3) In this section—

“exclusive economic zone” means the zone established under section 3 of the Exclusive Economic Zone Act;

“territorial sea” means the waters described in section 12 of the Maritime Areas Act.

148.—(1) This Act applies to things done on a Jamaican ship or Jamaican aircraft as it applies to things done in Jamaica.

Act applies to Jamaican ships, aircraft.

(2) In this section “Jamaican ship” and “Jamaican aircraft” mean, respectively, a ship or aircraft registered in Jamaica.

Fees.
Third
Schedule.
13/2015
S. 30.

148A.—(1) The fees specified in the Third Schedule shall be payable to the Office in respect of the matters therein prescribed.

(2) The Minister may by order amend the Third Schedule.

Act binds
Crown.

149. This Act binds the Crown.

Regulations.

13/2015
S. 31.

150. The Minister may make regulations prescribing such matters as are required or permitted by this Act to be prescribed or as are necessary or desirable to be prescribed for giving effect to this Act and, notwithstanding the generality of the foregoing, the Minister may also prescribe fees in relation to any matter under this Act.

Repeals.

151.—(1) The Copyright Act, 1911, of the United Kingdom, in so far as it is part of the law of Jamaica shall cease to have effect in Jamaica on the appointed day.

(2) Without prejudice to section 25 of the Interpretation Act, the repeal under subsection (1) in relation to the Copyright Act, 1911 of the United Kingdom includes the repeal of any Order-in-Council or subsidiary legislation made under that Act, in so far as it has effect as part of the law of Jamaica.

Savings.

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

Transi-
tional.

153.—(1) Where immediately prior to the appointed day copyright subsists in Jamaica in any literary, dramatic, musical or artistic work by virtue of the Copyright Act, 1911 of the United Kingdom, such copyright shall continue to subsist and the person entitled thereto by virtue of that Act

shall be the owner thereof, under and subject to this Act, and in particular—

- (a) the duration of such copyright;
- (b) the acts comprised within the exclusive rights attaching to such copyright; and
- (c) the effect upon the ownership of such copyright of any event or transaction occurring or of any contract or agreement made on or after the appointed day,

shall be governed by this Act.

(2) Where, on the appointed day copyright subsists in Jamaica by virtue of section 19 (1) of the Copyright Act, 1911 of the United Kingdom, in any record, perforated roll or other contrivance by virtue of which sounds may be mechanically produced, such copyright shall continue—

- (a) to subsist for the remainder of the period for which it would have subsisted if this Act had not been passed; and
- (b) in relation to any such record, perforated roll or contrivance, to have the meaning and effect it would have had if this Act had not been passed.

(3) No act done before the appointed day is actionable by virtue of the conferment of the rights specified in Part III.

(4) The right conferred by section 14 to be identified as the author or, as the case may be, director of a work, and the right conferred by section 15 to object to derogatory treatment of such work, shall not apply—

- (a) in relation to a literary, dramatic, musical or artistic work of which the author died before the appointed day; or
- (b) in relation to a film made before the appointed day.

(5) The rights in relation to a literary, dramatic, musical or artistic work existing before the appointed day do not apply—

- (a) where copyright first vested in the author, to anything which, by virtue of an assignment of copyright made or licence granted before the appointed day, 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.

(6) The right to privacy conferred by section 17 in respect of photographs and films does not apply to photographs taken or films made, before the appointed day.

(7) Where before the appointed day any person has incurred any expenditure or liability in connection with or in contemplation of, the doing of an act in relation to a protected work or in a performance in respect of which rights are conferred by this Act, being an act which prior to that date would have been lawful, nothing in this Act shall diminish or prejudice any rights or interests which, in relation to that work or performance, are subsisting and valuable on the appointed day, unless the person who, by virtue of this Act, is the owner of the copyright or the person having rights in the performance agrees to pay such compensation as, in default of agreement, may be fixed by the Copyright Tribunal.

(8) Where an act done before the appointed day was then an infringement of copyright but is not an infringement of copyright under this Act, then, proceedings in respect of that Act may be taken as if this Act had not been passed.

(9) An act done before the appointed day shall not be an infringement of copyright or rights in performances

conferred by this Act if that Act would not, but for the passing of this Act, have constituted an infringement.

(10) Proceedings for infringement of copyright instituted but not disposed of before the appointed day shall be disposed of as if this Act had not been passed.

(11) Proceedings under this Act for infringement may be taken notwithstanding that the alleged infringement occurred before the appointed day.

154. Notwithstanding section 87A, a licensing body operating before the date of coming into operation of the Copyright (Amendment) Act, 2015, shall be required to satisfy the requirements for registration under section 87A and any regulations in relation thereto, within six months from that date or such longer period as the Minister, after consultation with the Executive Director, may by order prescribe.

Further
transitional
provisions.
13/2015
S. 32.

COPYRIGHT

FIRST SCHEDULE

(Sections 9B and 9E)

FORM A

The Copyright Act

Voluntary Copyright Registration Service

Registration Number: ____/____/____	 JIPO Jamaica Intellectual Property Office
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*Application for Registration to Enter Particulars in Register
(Pursuant to section 9B)*

1. Title of Work(s): _____
2. Description of Work: _____
 Artistic (includes layout for websites)/Literary/Musical/Dramatic (dance, mimes)/Film/Computer software/Sound Recording/Typographical Arrangement of Published Editions
3. Also registered at JIPO as:
 Trade Mark ☐ Patent ☐ Industrial Design ☐ Geographical ☐
 Indication
4. Date and Country where work was made: _____
5. If published, country and date of first publication: _____
6. Single Author: ☐ Joint Authors: ☐ Number of joint Authors: _____
7. Name of Author: _____
 Mailing Address: _____
 Telephone Numbers: (home) _____ (office) _____
 (mobile) _____
 Email: _____
 Country of Citizenship or Habitual Residence: (please state) _____
 Date of Birth: _____
 Date of Death: _____
 Name of Author: _____

FORM A, *cont'd.*

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

Country of Citizenship or Habitual Residence: (please state) _____

Date of Birth: _____

Date of Death: _____

For additional authors, please continue on additional blank paper

8. Pseudonym/Alias: _____

9. Is Author the Copyright Owner?: Yes ☐ (proceed to 14)No ☐ (proceed to 10)

10. Name of Copyright Owner: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

Country of Citizenship or Habitual Residence: (please state) _____

Name of Copyright Owner: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

Country of Citizenship or Habitual Residence: (please state) _____

11. Relationship to Author(s):

Publisher ☐ Record Producer ☐ Manager ☐ Employer ☐Assignee ☐ Beneficiary ☐ Other (please specify) _____

12. Nature of Rights Owned:

COPYRIGHT

FORM A, *cont'd.*All rights: ☐ Reproduction (text/image) ☐Reproduction(music/lyrics) ☐Synchronisation ☐ Other Reproduction (please specify) _____Distribution ☐ Public Performance ☐ Adaptation ☐Broadcast/inclusion in cable programme ☐

Other (please specify) _____

13. Duration of Rights: From: _____ To: _____

14. Form Deposited by:

Name of Agent: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

15. Declaration by Author/Copyright Owner:

I/We _____ hereby declare that I/we am/are
(please select as appropriate)

the true author(s) and /or owner of the work above described and have deposited an electronic copy of the work with the Jamaica Intellectual Property Office of my own free will and volition.

I/We fully understand that depositing a copy of this work with Jamaica Intellectual Property Office does not grant copyright, nor prevent potential acts of infringement but only provides, *prima facie* evidence of my/our claim of authorship/ownership in the deposited work. I/We grant Jamaica Intellectual Property Office permission to reproduce and store in electronic format, a copy of my/our work for the purposes of this copyright registration service only.

It has been explained to me/us and I/we fully understand that copyright arises automatically once a work qualifies under Part II of the Copyright Act of Jamaica, 1993 and, that the Jamaica Intellectual Property Office shall only indicate under which category of work it may be classified.

I/We hereby also declare that the information contained herein is true to the best of my/our knowledge and belief. I/We will indemnify and hold the Jamaica Intellectual Property Office harmless against any and all third party claims in respect of its dealings with the work deposited.

COPYRIGHT

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FORM A, *cont'd.*

Signed:

(Author/Copyright Owner)

Date

Witness

Date

Signed:

(Author/Copyright Owner)

Date

Witness

Date

**If Author is under 18, Declaration and Signature of Parent/Guardian
Required**

I hereby declare that I am the parent/guardian of the abovenamed author/
copyright owner of the above-described work deposited with the Jamaica
Intellectual Property Office. I have read and fully understand the above
terms and conditions of depositing this work with the Jamaica Intellectual
Property Office and have also explained the terms and conditions to my
child/ward.

Signed:

Name of Parent/Guardian

Date

Witness

Date

COPYRIGHT

FORM A, *cont'd.*

FOR JIPO USE ONLY			
Registration fee paid?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Amount paid: _____
Declaration of copyright submitted:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Electronic file deposited:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Proof of authorization to deposit from (if by agent):	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Date of Registration:	_____		
COMPLETED BY:	_____		
(JIPO Officer)	Name	Signature	Date

Note:

This Form shall be completed by the Author/Copyright Owner and submitted to the Jamaica Intellectual Property Office by the Author/Copyright Owner or the Agent of the Author/Copyright Owner.

*COPYRIGHT*FORM B, *cont'd.***TAKEN AND ACKNOWLEDGED}**

By

This day of , 20 ,
in the Parish of ._____
Justice of the Peace_____
Author/Copyright Owner**TAKEN AND ACKNOWLEDGED}**

By

This day of , 20 ,
in the Parish of ._____
Justice of the Peace_____
Author/Copyright Owner

COPYRIGHT

FORM B

The Copyright Act

Voluntary Copyright Registration Service

Registration Number: ____/____/____	 JIPO Jamaica Intellectual Property Office
--	---

Declaration of Copyright Ownership and/or Authorship (Pursuant to section 9B)

I/We _____ is the author/owner of the copyright
(the applicant)

- ☐ a person to whom a partial assignment is made pursuant to section 23(2)
- ☐ a licence granted.

DO SOLEMNLY AND SINCERELY DECLARE as follows:

1. That I/we am/are the author/person to whom a partial assignment or licence is made or grante by the copyright owner(s) of a _____ work entitled _____.
2. Described nature of the work _____.
3. The work was made on _____ at _____.
4. That copies of the said work were first issued to the public on _____ at _____.
5. _____ is/am/are the author(s) of the work and which is original to me/us/him/them and not copied from another work.
6. The electronic version of the work submitted to the Jamaica Intellectual Property Office is a true representation of the work described herein, in respect of which I/we claim authorship/copyright ownership.

AND I/WE MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by virtue of the provisions of the Voluntary Declarations Act.

FORM C

The Copyright Act

Voluntary Copyright Registration Service

Registration Number: ____/____/____	
--	---

*Certificate of Registration
(Pursuant to section 9B)*

I hereby declare that on the _____ day of _____, 20____, a claim of authorship and/or ownership of copyright by _____ was entered into the Register of Voluntary Copyright Registration Service at the Jamaica Intellectual Property Office in respect of the following work(s):

Name: _____

Type: _____

Author: _____

Date of creation: _____

Country of creation/publication: _____

Registration number: _____

Executive Director

(JIPO SEAL)

Date: _____

Notes:

1. The Jamaica Intellectual Property Office assumes no responsibility as to the truth and facts asserted by the claimant and has conducted no independent examination regarding the qualification of the work for copyright protection.
2. Copyright protection arises automatically once the requirements under the Copyright Act of Jamaica are satisfied.
3. This Certificate merely attests that a claim of authorship/copyright ownership was deposited with the Jamaica Intellectual Property Office on the date so indicated.

COPYRIGHT

FORM D

The Copyright Act

Voluntary Copyright Registration Service

Registration Number: ____/____/____	
--	---

*Request to Change Registration Details
(Pursuant to section 9E)*

1. Name of Applicant: _____
2. Relationship to Registered Work:

Author only ☐ Copyright Owner only ☐

Author and Copyright Owner ☐
3. Record a change of:

(a) mailing address of author: ☐ go to 4 and complete that section

(b) mailing address of next of kin: ☐ go to 5 and complete that section

(c) death of author: ☐ go to 6 and complete that section

(d) publication of work: ☐ go to 7 and complete that section

(e) name of copyright owner: ☐ go to 8 and complete that section

(f) mailing address of copyright owner: ☐ go to 8 and complete that section

(g) rights owned by copyright owner: ☐ go to 10 and complete that section
4. New mailing address: Author _____

 Telephone Numbers: (home) _____ (office) _____
 (mobile) _____
 Email: _____
5. New mailing address: Next of kin _____

 Telephone Numbers: (home) _____ (office) _____
 (mobile) _____
 Email: _____

FORM D, *cont'd.*

6. Date of death of author(s): _____

7. Country and date of first publication: _____

8. Name of New Copyright Owner: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

Country of Citizenship or Habitual Residence (please state): _____

Contact/Agent: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

Name of New Copyright Owner: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

Country of Citizenship or Habitual Residence (please state): _____

Contact/Agent: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

9. Nature of Transfer: ---

(a) testamentary disposition

(b) assignment/licence

(c) other (please specify) _____

COPYRIGHT

FORM D, *cont'd.*

10. Nature of rights owned:

All rights: ☐ Reproduction (text/image) ☐ Reproduction (music/lyrics) ☐Synchronisation ☐ Other Reproduction (please specify) _____Distribution ☐ Public Performance ☐ Adaptation ☐Broadcast/inclusion in cable programme ☐

Other (please specify) _____

11. Duration of rights: From: _____ to: _____

12. Declaration by Author/Copyright Owner:

I/We _____ hereby declare that the information
(please select as appropriate)

contained herein is true to the best of my/our knowledge and belief.

I/We will indemnify and hold the Jamaica Intellectual Property Office
harmless against any and all third party claims in respect of its dealings
with the work deposited.

Signed:

(Author/Copyright Owner)_____
Date_____
Witness_____
Date

Signed:

(Author/Copyright Owner)_____
Date_____
Witness_____
Date

FORM D, *cont'd.***If Author is under 18, Declaration and Signature of Parent/Guardian Required**

I hereby declare that I am the parent/guardian of the abovenamed author/copyright owner of the above-described work deposited with the Jamaica Intellectual Property Office. I have read and fully understand the above terms and conditions of depositing this work with the Jamaica Intellectual Property Office and have also explained the terms and conditions to my child/ward.

Signed:

Name of Parent/Guardian_____
Date_____
Witness_____
Date**FOR JIPO USE ONLY**COMPLETED BY:
(JIPO Officer)_____
Name_____
Signature_____
Date

Constitution
of the
Tribunal.

1.—(1) The Tribunal shall consist of a chairman and two deputy chairmen and not less than two nor more than eight other members.

(2) A person eligible for appointment as chairman or a deputy chairman if he is an attorney-at-law of not less than five years' standing or a person who has held judicial office.

Appointment
of members.

2. The members of the Tribunal shall be appointed by the Minister by instrument in writing, and, subject to the provisions of this Schedule, shall hold office for such period, not exceeding three years, as may be specified in the instrument, but shall be eligible for reappointment.

Resignations.

3. A member of the Tribunal may at any time resign his office by instrument in writing and such resignation shall take effect as from the date of the receipt by the Minister of such instrument.

Revocation
of appointments.

4. The Minister may by instrument in writing at any time revoke the appointment of any member of the Tribunal if—

- (a) he has become bankrupt; or
- (b) he is incapacitated by physical or mental illness,

or if he is, in the opinion of the Minister, otherwise unfit to perform his duties as member.

Proceedings
of Tribunal.

5.—(1) The Copyright Tribunal shall sit in such number of divisions as may from time to time be necessary.

(2) A division of the Tribunal shall consist of—

- (a) a chairman, who shall be either the chairman or a deputy chairman of the Tribunal; and
- (b) two or more ordinary members.

(3) Where in any proceedings the members are not unanimous, the decision of the Tribunal shall be by a majority of the votes of the members, and in the event of an equality of votes, the chairman shall be entitled to a second or casting vote.

(4) Where part of any proceedings before the Tribunal has been heard and one or more members of the Tribunal are unable to continue, the Tribunal shall remain duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than three.

(5) If the chairman of a division of the Tribunal is unable to continue he shall—

- (a) appoint one of the remaining members to act as chairman; and
- (b) appoint a suitably qualified person to attend the proceedings and advise the members of any question of law arising.

THIRD SCHEDULE (Sections 9B and 148A) 13/2015
S. 33.*Registration and Certification Fees**Library Works—**Poems/lyrics/short stories*

1-10 works	\$500.00
11-50 works	\$1,000.00
51-100 works	\$2,000.00
Each succeeding 10 works	\$ 10.00

Book/script/magazine/catalogue/newsletter/minutes of meetings

Under 100 pages	\$1,000.00
100-250 pages	\$2,000.00
Each succeeding 50 pages	\$ 500.00

Press release/flyers/circulars, etc. \$ 250.00*Audio-Visual/Dramatic Works*

Film: 15 minutes or less	\$3,000.00 each
Documentaries	\$4,000.00
Feature film /plays	\$7,000.00
Other (e.g. lectures, weddings) under 3 hours	\$2,500.00
Each succeeding 50 pages	\$ 500.00

Artistic Works/Typographical Arrangements

Photo/painting/graphic image/dress pattern: (black/white)	\$ 200.00 each
(colour)	\$ 250.00 each
Technical drawing/map/website or book layout	\$1,500.00

Musical Works/Sound Recordings

1-15 compositions/pieces	\$1,000.00
20-40 compositions	\$2,500.00
Each additional 10 compositions	\$ 500.00

Computer Software \$1,000.00*Certified copies of registration certificate* \$ 200.00 per page*Application for Registration to enter particulars
in the Register* \$1,000.00