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The Copyright (Bailiwick of Guernsey) Ordinance, 2005

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Ordinance, 2005**

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The Copyright (Bailiwick of Guernsey) Ordinance, 2005

THE STATES, in pursuance of their Resolution of the 27th November, 2002^a, and in exercise of the powers conferred on them by sections 1 and 3 of the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^b and all other powers enabling them in that behalf, hereby order:-

PART I SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT

Introductory

Copyright and copyright works.

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

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

(2) In this Ordinance "**copyright work**" means a work of any of those descriptions in which copyright subsists.

^a Article XIX of Billet d'État No. XXIII of 2002.

^b Order in Council No. XIV of 2004.

(3) Copyright does not subsist in a work unless the requirements of this Ordinance with respect to qualification for copyright protection are met (see Part VIII, section 181 and the provisions referred to there).

Rights subsisting in copyright works.

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

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

- (a) section 99 (right to be identified as author or director),
- (b) section 102 (right to object to derogatory treatment of work), and
- (c) section 107 (right to privacy of certain photographs and films).

Description of work and related provisions

Literary, dramatic and musical works.

3. (1) In this Ordinance -

"**database**" means a collection of independent works, data or other materials which -

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

"dramatic work" includes a work of dance or mime,

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

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

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

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

(3) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise, and references in this

Ordinance to the time at which that work is made are to the time at which it is so recorded.

(4) It is immaterial for the purposes of subsection (3) 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 affects the question whether copyright subsists in the record as distinct from the work recorded.

Artistic works.

4. (1) In this Ordinance "**artistic work**" means -

- (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,
- (b) a work of architecture being a building or a model for a building, or
- (c) a work of artistic craftsmanship.

(2) In this Ordinance -

"**building**" includes any fixed structure, and a part of a building or fixed structure,

"**graphic work**" includes -

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

similar work,

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

"sculpture" includes a cast or model made for purposes of sculpture.

Sound recordings.

5. (1) In this Ordinance **"sound recording"** means -

- (a) a recording of sounds, from which the sounds may be reproduced, or
- (b) a recording of the whole or any part of a literary, dramatic or musical work from which sounds reproducing the work or part may be produced,

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

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

Films.

6. (1) In this Ordinance **"film"** means a recording on any medium from which a moving image may by any means be produced.

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

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

(a) references in this Ordinance to showing a film include playing the film soundtrack to accompany the film, and

(b) references to playing a sound recording do not include playing the sound track to accompany the film.

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

(5) Nothing in this section affects any copyright subsisting in a film sound track as a sound recording.

Broadcasts.

7. (1) In this Ordinance "broadcast" means an electronic transmission of visual images, sounds or other information which -

(a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or

(b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public,

and which is not excepted by subsection (2); and references to broadcasting shall be

construed accordingly.

(2) Excepted from the definition of "**broadcast**" is any internet transmission unless it is -

- (a) a transmission taking place simultaneously on the internet and by other means,
- (b) a concurrent transmission of a live event, or
- (c) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person.

(3) 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.

(4) References in this Ordinance to the person making a broadcast, are -

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

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

(5) For the purposes of this Ordinance, the place from which a wireless broadcast is made is the place where, under the control and responsibility of the person making the broadcast, programme-carrying signals are introduced into an uninterrupted chain of communication, (including, in the case of a satellite transmission, the chain leading to the satellite and down to the earth).

(6) Subsections (3) and (4) have effect subject to section 8 (safeguards in case of certain satellite broadcasts).

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

(7) The relaying of a broadcast by reception and immediate transmission shall be regarded for the purposes of this Ordinance as a separate act of broadcasting from the making of a broadcast which is so re-transmitted.

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

Safeguards in case of certain satellite broadcasts.

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

(a) exclusive rights in relation to wireless broadcasting

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equivalent to those conferred by section 24 (infringement by communication to the public) on the authors of literary, dramatic, musical and artistic works, films and broadcasts,

- (b) a right in relation to live wireless broadcasting equivalent to that conferred on a performer by section 3(1)(b) of the Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005 (consent required for live broadcast of performance), and
- (c) a right for authors of sound recordings and performers to share in a single equitable remuneration in respect of the wireless broadcasting of sound recordings.

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

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

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

- (a) that person shall be treated as the person making the broadcast, and

- (b) the place in which he has his principal establishment in the EEA shall be treated as the place from which the broadcast is made.

Published editions.

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

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

Authorship and ownership of copyright

Authorship of work.

10. (1) In this Ordinance "**author**", in relation to a work, means the person who creates it.

- (2) That person shall be taken to be -
 - (a) in the case of a sound recording, the producer,
 - (b) in the case of a film, the producer and the principal director,
 - (c) in the case of a broadcast, the person making the broadcast (see section 7(4)) or, in the case of a

broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast, and

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

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

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

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

Works of joint authorship.

11. (1) In this Ordinance a "**work of joint authorship**" means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.

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

(3) A broadcast shall be treated as a work of joint authorship in any case where more than one person is to be taken as making the broadcast (see

section 7(4)).

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

First ownership of copyright.

12. (1) The author of a work is the first owner of any copyright in it, subject to the following provisions.

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

(3) This section does not apply to Crown copyright or States copyright (see sections 189 to 193) or to copyright which subsists by virtue of section 194 (copyright vesting in certain international organisations).

Duration of copyright

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

13. (1) The following provisions have effect with respect to the duration of copyright in a literary, dramatic, musical or artistic work.

(2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the author dies, subject as follows.

(3) If the work is of unknown authorship, copyright expires -

(a) at the end of the period of 70 years from the end of the

calendar year in which the work was made, or

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

subject as follows.

(4) Subsection (2) applies if the identity of the author becomes known before the end of the period specified in subsection (3)(a) or (3)(b).

(5) For the purposes of subsection (3), making available to the public includes -

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

- (i) a performance in public, or

- (ii) communication to the public,

- (b) in the case of an artistic work -

- (i) exhibition in public,

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

- (iii) communication to the public,

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

(6) Where the country of origin of the work is not an EEA State and the author of the work is not a national of an EEA State the duration of copyright is that to which the work is entitled in the country of origin, if that does not exceed the period which would otherwise apply under subsections (2) to (5).

(7) If the work is computer-generated the above provisions do not apply, and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.

(8) The provisions of this section are adapted as follows in relation to a work of joint authorship -

(a) the reference in subsection (2) to the death of the author shall be construed -

(i) if the identity of all the authors is known, as a reference to the death of the last of them to die, and

(ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known,

(b) the reference in subsection (4) to the identity of the author becoming known shall be construed as a

reference to the identity of any of the authors becoming known,

- (c) the reference in subsection (6) to the author not being a national of an EEA State shall be construed as a reference to none of the authors being a national of an EEA State.

(9) This section does not apply to Crown copyright or States copyright (sections 189 to 193) or to copyright which subsists by virtue of section 194 (copyright vesting in certain international organisations).

Duration of copyright in sound recordings.

14. (1) The following provisions have effect with respect to the duration of copyright in a sound recording.

(2) Subject to subsections (3) and (4), copyright expires -

- (a) at the end of the period of 50 years from the end of the calendar year in which the recording is made,
- (b) if during that period the recording is published, 50 years from the end of the calendar year in which it is first published, or
- (c) if during that period the recording is not published but is made available to the public by being played in public or communicated to the public, 50 years from the end of the calendar year in which it is first so made available,

but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorised act.

(3) Where the author of a sound recording is not a national of an EEA State, the duration of copyright is that to which the sound recording is entitled in the country of which the author is a national, if that does not exceed the period which would apply under subsection (2).

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

Duration of copyright in films.

15. (1) The following provisions have effect with respect to the duration of copyright in a film.

(2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the death occurs of the last to die of the following persons -

- (a) the principal director,
- (b) the author of the screenplay,
- (c) the author of the dialogue, or
- (d) the composer of music specially created for and used in the film,

subject as follows.

(3) If the identity of one or more of the persons referred to in subsection (2)(a) to (d) is known and the identity of one or more others is not, the reference in that subsection to the death of the last of them to die shall be construed as a reference to the death of the last whose identity is known.

(4) If the identity of the persons referred to in subsection (2)(a) to (d) is unknown, copyright expires at -

(a) the end of the period of 70 years from the end of the calendar year in which the film was made, or

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

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

(6) For the purposes of subsection (4) making available to the public includes -

(a) showing in public, or

(b) communicating to the public.

but in determining generally for the purposes of subsection (4) whether a film has been made available to the public no account shall be taken of any unauthorised act.

(7) Where the country of origin is not an EEA State and the author of the film is not a national of an EEA State, the duration of copyright is that to which the work is entitled in the country of origin, if that does not exceed the period which would apply under subsections (2) to (6).

(8) In relation to a film of which there are joint authors, the reference in subsection (7) to the author not being a national of an EEA State shall be construed as a reference to none of the authors being a national of an EEA State.

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

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

Duration of copyright in broadcasts.

16. (1) The following provisions have effect with respect to the duration of copyright in a broadcast.

(2) Copyright in a broadcast expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made, subject as follows.

(3) Where the author of the broadcast is not a national of an EEA State, the duration of copyright in the broadcast is that to which it is entitled in the country of which the author is a national, if that does not exceed the period which would apply under subsection (2).

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

(5) Copyright in a repeat broadcast expires at the same time as the copyright in the original broadcast and accordingly no copyright arises in respect of a repeat broadcast which is broadcast after the expiry of the copyright in the original broadcast.

(6) A repeat broadcast means one which is a repeat of a broadcast previously made.

Duration of copyright in typographical arrangements of published editions.

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

Meaning of country of origin.

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

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

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

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

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

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

- (a) if the work is a film and the maker of the film has his headquarters in, or is domiciled or resident in, a Berne Convention country, that country,
- (b) if the work is -
 - (i) a work of architecture constructed in a Berne Convention country, or
 - (ii) an artistic work incorporated in a building or

other structure situated in a Berne Convention country,

that country,

(c) in any other case, the country of which the author of the work is a national.

(6) In this section -

(a) a "**Berne Convention country**" means a country which is a party to any Act of the International Convention for the Protection of Literary and Artistic Works signed at Berne on the 9th September, 1886, and

(b) references to simultaneous publication are to publication within 30 days of first publication.

PART II

RIGHTS OF COPYRIGHT OWNER

Acts restricted by copyright

The acts restricted by copyright in a work.

19. (1) The owner of the copyright in a work has, in accordance with the following provisions of this Part, the exclusive right to do the following acts in the Bailiwick -

(a) to copy the work (see section 20),

- (b) to issue copies of the work to the public (see section 21),
- (c) to rent or lend the work to the public (see section 22),
- (d) to perform, show or play the work in public (see section 23),
- (e) to communicate the work to the public (see section 24),
- (f) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 25).

and those acts are referred to in this Ordinance as the "**acts restricted by the copyright**".

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

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

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

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

- (4) This Part has effect subject to -
 - (a) the provisions of Part III (acts permitted in relation to copyright works), and
 - (b) the provisions of Part VII (provisions with respect to copyright licensing).

Primary infringement of copyright

Infringement of copyright by copying.

20. (1) The copying of work is an act restricted by the copyright in every description of copyright work, and references in this Ordinance to copying and copies shall be construed as follows.

(2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form.

This includes storing the work in any medium by electronic means.

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

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

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

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

Infringement by issue of copies to the public.

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

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

- (a) the act of putting into circulation in the Bailiwick or the EEA copies not previously put into circulation in the Bailiwick or the EEA by or with the consent of the copyright owner, or
- (b) the act of putting into circulation outside the Bailiwick and the EEA copies not previously put into circulation in the Bailiwick or the EEA or elsewhere.

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

- (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation, but see section 22 (infringement by rental or lending), or

- (b) any subsequent importation of those copies into the Bailiwick or the EEA,

except so far as subsection (2)(a) applies to putting into circulation in the Bailiwick or the EEA copies previously put into circulation outside the Bailiwick and the EEA.

(4) References in this Ordinance to the issue of copies of a work include the issue of the original and the issue of copies in electronic form.

Infringement by rental or lending of work to the public.

22. (1) The rental or lending of copies of the work to the public is an act restricted by the copyright in -

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

(2) In this Ordinance subject to the following provisions of this section -

- (a) "**rental**" means making a copy of the work available

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for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage, and

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

(3) The expressions "**rental**" and "**lending**" do not include -

(a) making available for the purpose of public performance, playing or showing in public, or communication to the public,

(b) making available for the purpose of exhibition in public, or

(c) making available for on-the-spot reference use.

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

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

(6) References in this Ordinance to the rental or lending of copies

of a work include the rental or lending of the original.

Infringement by performance, showing or playing of work in public.

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

(2) In this Ordinance "**performance**", in relation to a work -

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

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

(3) The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film or broadcast.

(4) Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds conveyed by electronic means, the person by whom the visual image or sounds are sent and, in the case of a performance, the performers, shall not be regarded as responsible for the infringement.

Infringement by communication to the public.

24. (1) The communication to the public of the work is an act restricted by the copyright in -

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

- (b) a sound recording or film, or
- (c) a broadcast.

(2) References in this Ordinance to communication to the public are to communication to the public by electronic transmission, and in relation to a work include -

- (a) the broadcasting of the work, and
- (b) the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

Infringement by making adaptation or act done in relation to adaptation.

25. (1) The making of an adaptation of the work is an act restricted by the copyright in a literary, dramatic or musical work.

For this purpose an adaptation is made when it is recorded, in writing or otherwise.

(2) The doing of any of the acts specified in sections 20 to 24, or subsection (1) in relation to an adaptation of the work, is an act restricted by the copyright in a literary, dramatic or musical work.

For this purpose it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.

(3) In this Ordinance "**adaptation**" -

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(a) in relation to a literary work other than a computer program or a database, or in relation to a dramatic work, means -

(i) a translation of the work,

(ii) a version of a dramatic work in which it is converted into a non-dramatic work or of a non-dramatic work in which it is converted into a dramatic work,

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

(b) in relation to a computer program, means an arrangement or altered version of the program or a translation of it,

(c) in relation to a database, means an arrangement or altered version of the database or a translation of it,

(d) in relation to a musical work, means an arrangement or transcription of the work.

(4) In relation to a computer program a "**translation**" includes a version of the program in which it is converted into or out of a computer language

or code or into a different computer language or code.

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

Secondary infringement of copyright

Secondary infringement: importing infringing copy.

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

Secondary infringement: possessing or dealing with infringing copy.

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

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

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

Secondary infringement: providing means for making infringing copies.

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

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

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

(2) Copyright in a work 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 communication to the public), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in the Bailiwick or elsewhere.

Secondary infringement: permitting use of premises for infringing performance.

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

(2) In this section "**place of public entertainment**" includes premises which are occupied mainly for other purposes but are from time to time made available for hire for the purposes of public entertainment.

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

30. (1) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, by means of apparatus for -

- (a) playing sound recordings,
- (b) showing films, or
- (c) receiving visual images or sounds conveyed by electronic means,

the following persons are also liable for the infringement.

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

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

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

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

Infringing copies

Meaning of "infringing copy".

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

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

(3) An article is an infringing copy if -

(a) it has been or is proposed to be imported into the Bailiwick, and

(b) its making in the Bailiwick would have constituted an infringement of the copyright in the work in question or a breach of an exclusive licence agreement relating to that work.

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

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

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

(5) Nothing in subsection (3) shall be construed as applying to an article which may lawfully be imported into the Bailiwick by virtue of any enforceable Community right within the meaning of section 2(1) of the European Communities (Bailiwick of Guernsey) Law, 1973^c.

(6) In this Ordinance "**infringing copy**" 'includes a copy which falls to be treated as an infringing copy by virtue of any of the following provisions-

- (a) sections 38(6) and 38(9) (making a single accessible copy for personal use),
- (b) sections 39(9) and 39(10) (multiple copies for visually impaired persons),
- (c) section 40(2) (intermediate copies held by approved bodies),

^c Ordres en Conseil Vol. XXIV, p. 87.

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- (d) section 44(8) (copies made for purpose of instruction or examination),
- (e) section 47(4) (recordings made by educational establishments for educational purposes),
- (f) section 48(7) (reprographic copying by educational establishments for instruction purposes),
- (g) section 50(4) (copies made by librarian or archivist in reliance on false declaration),
- (h) section 76(2) (further copies, adaptations, etc. of work in electronic form retained on transfer of principal copy),
- (i) section 83(2) (copies made for purpose of advertising artistic work for sale),
- (j) section 89(4) (copies made for purpose of broadcast),
- (k) section 91(2) (recording for the purposes of time shifting),
- (l) section 92(2) (photographs of broadcasts), or
- (m) any provision of regulations under section 177 (statutory licence for certain reprographic copying by educational establishments).

PART III

ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

Introductory

Introductory provisions.

32. (1) The provisions of this Part specify acts which may be done in relation to copyright works notwithstanding the subsistence of copyright.

They relate only to the question of infringement of copyright and do not affect any other right or obligation restricting the doing of any of the specified acts.

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

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

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

Making of temporary copies.

33. Copyright in -

- (a) a literary work (other than a computer program or a database),

- (b) a dramatic, musical or artistic work,
- (c) the typographical arrangement of a published edition,
or
- (d) a sound recording or a film,

is not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable -

- (i) a transmission of the work in a network
between third parties by an intermediary, or
- (ii) a lawful use of the work,

and which has no independent economic significance.

Fair dealing for the purpose of research and private study.

34. (1) Fair dealing with a literary, dramatic, musical or artistic work, for the purpose of non-commercial research, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

(2) No acknowledgement is required in connection with fair dealing for the purpose mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.

(3) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of private study does not infringe any copyright in the work.

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

(5) Copying by a person other than the researcher or student himself is not fair dealing if -

(a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 53 would not permit to be done under section 51 or 52 (articles or parts of published works, restriction on multiple copies of same material), or

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

(6) It is not fair dealing -

(a) to convert a computer program expressed in a low level language into a version expressed in a higher level language, or

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

(which acts are permitted if done in accordance with section 67 (decompilation)).

(7) It is not fair dealing to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program (these acts being permitted if done in accordance with section 68 (observing, studying and testing)).

Fair dealing for the purpose of criticism, review and news reporting.

35. (1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work if it is accompanied by a sufficient acknowledgment and provided that the work has been made available to the public.

(2) For the purposes of subsection (1) a work has been made available to the public if it has been made available by any means, including -

- (a) the issue of copies to the public,
- (b) making the work available by means of an electronic retrieval system,
- (c) the rental or lending of copies of the work to the public,
- (d) the performance, exhibition, playing or showing of the work in public,
- (e) the communication to the public of the work,

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

(3) Fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work provided that, subject to subsection (4), it is accompanied by a sufficient acknowledgment.

(4) No acknowledgment is required in connection with the reporting of current events by means of a sound recording, film or broadcast where this would be impossible for reasons of practicality or otherwise.

Fair dealing in relation to works for any other purpose.

36. (1) A fair dealing with any copyright work for any other purpose which does not unreasonably affect the legitimate interests of the copyright owner and does not conflict with the normal exploitation of the work, does not constitute an infringement of the copyright in the work provided that it is accompanied by a sufficient acknowledgement.

(2) In determining for the purposes of subsection (1), whether there has been any conflict with the normal exploitation of the work, an assessment shall be made which shall, without limitation, include consideration of the following factors -

- (a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes,
- (b) the nature of the work or adaptation,
- (c) the amount and substantiality of the part copied taken in relation to the whole work or adaptation,

- (d) the effect of the dealing upon the potential market for, or value of, the work or adaptation, and
- (e) the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price.

Incidental inclusion of copyright material.

37. (1) Copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, film or broadcast.

(2) Copyright in a work is not infringed by the issue to the public of copies, or the playing, showing, or communication to the public, of anything the making of which was, by virtue of subsection (1), not an infringement of the copyright.

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

Making a single accessible copy for personal use.

38. (1) If a visually impaired person has lawful possession or lawful use of a copy ("**the master copy**") of the whole or part of -

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

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

(2) Subsection (1) does not apply -

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

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

(4) An accessible copy made under this section must be accompanied by -

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

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

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

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

- (a) a visually impaired person entitled to have the accessible copy made under subsection (1), or
- (b) a person who has lawful possession of the master copy and intends to transfer the accessible copy to a person falling within paragraph (a).

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

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

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

(10) In subsection (9), "**dealt with**" means sold or let for hire or

offered or exposed for sale or hire or communicated to the public

Multiple copies for visually impaired persons.

39. (1) If an approved body has lawful possession of a copy ("**the master copy**") of the whole or part of -

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

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

(2) Subsection (1) does not apply -

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

(3) Subsection (1) does not apply in relation to the making of an accessible copy if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form

that is accessible to the same or substantially the same degree.

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

(5) An accessible copy made under this section must be accompanied by -

(a) a statement that it is made under this section, and

(b) a sufficient acknowledgement.

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

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

(8) If the master copy is in copy-protected electronic form, any accessible copy made of it under this section must, so far as it is reasonably practicable to do so, incorporate the same, or equally effective, copy protection (unless the copyright owner agrees otherwise).

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

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

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

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

(11) In subsection (10), "**dealt with**" means sold or let for hire or offered or exposed for sale or hire or communicated to the public.

(12) "**Approved body**" means an educational establishment or a body that is not conducted for profit.

(13) "**Supplying**" includes lending.

Intermediate copies and records.

40. (1) An approved body entitled to make accessible copies under section 39 may hold an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but only -

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

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

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

(3) An approved body may lend or transfer the intermediate copy to another approved body which is entitled to make accessible copies of the work or published edition under section 39.

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

(a) is another approved body which is entitled to make accessible copies of the work or published edition under section 39, and

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

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

(6) An approved body must -

(a) keep records of accessible copies made under section 39 and of the persons to whom they are supplied,

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

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

(7) Within a reasonable time of making an accessible copy under section 39, or lending or transferring an intermediate copy under this section, the approved body must -

- (a) notify each relevant representative body, or
- (b) if there is no such body, notify the copyright owner.

(8) A relevant representative body is a body which -

- (a) represents particular copyright owners, or owners of copyright in the type of copyright work concerned, and
- (b) has given notice to the Department of the copyright owners, or the classes of copyright owner, represented by it.

(9) The requirement to notify the copyright owner under subsection (7)(b) does not apply if it is not reasonably possible for the approved body to ascertain the name and address of the copyright owner.

Licensing schemes.

41. (1) Section 39 does not apply to the making of an accessible copy in a particular form if -

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- (a) a licensing scheme operated by a licensing body is in force under which licences may be granted by the licensing body permitting the making and supply of copies of the copyright work in that form,
 - (b) the scheme is not unreasonably restrictive, and
 - (c) the scheme and any modification made to it have been notified to the Department by the licensing body.
- (2) A scheme is unreasonably restrictive if it includes a term or condition which -
- (a) purports to prevent or limit the steps that may be taken under section 39 or 40, or
 - (b) has that effect.
- (3) But subsection (2) does not apply if -
- (a) the copyright work is no longer published by or with the authority of the copyright owner, and
 - (b) there are reasonable grounds for preventing or restricting the making of accessible copies of the work.
- (4) If section 39 or 40 is displaced by a licensing scheme, sections 146 to 150 apply in relation to the scheme as if it were one to which those

sections applied as a result of section 144.

Limitations, etc following infringement of copyright.

42. (1) The Department may make regulations under this section if it appears to it that the making of copies -

- (a) under section 39, or
- (b) under a licence granted under a licensing scheme that has been notified under section 41,

has led to infringement of copyright on a scale which, in the Department's opinion, would not have occurred if section 39 had not been in force, or the licence had not been granted.

(2) The regulations may prohibit one or more named approved bodies, or one or more specified categories of approved body, from -

- (a) acting under section 39, or
- (b) acting under a licence of a description specified in the regulations.

(3) The regulations may disapply -

- (a) the provisions of section 39, or
- (b) the provisions of a licence, or a licensing scheme, of a description specified in the regulations,

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

(4) If the Department proposes to make regulations it must, before making them, consult -

- (a) any such bodies representing copyright owners as it thinks fit, and
- (b) any such bodies representing visually impaired persons as it thinks fit.

(5) If the Department proposes to make regulations which include a prohibition it must, before making them, consult -

- (a) if the proposed regulations are to apply to one or more named approved bodies, that body or those bodies,
- (b) if the regulations are to apply to one or more specified categories of approved body, to such bodies representing approved bodies of that category or those categories as it thinks fit.

(6) An approved body which is prohibited by regulations from acting under a licence may not apply to the Ordinary Court under section 148(1) in respect of a refusal or failure by a licensing body to grant such a licence.

Definitions and other supplementary provisions for sections 38 to 42.

43. (1) This section supplements sections 38 to 42 and includes definitions.

(2) A copy of a copyright work (other than an accessible copy made under section 38 or 39) is to be taken to be accessible to a visually impaired person only if it is as accessible to him as it would be if he were not visually impaired.

(3) "**Accessible copy**", in relation to a copyright work, means a version which provides for a visually impaired person improved access to the work.

(4) An accessible copy may include facilities for navigating around the version of the copyright work but may not include -

(a) changes that are not necessary to overcome problems caused by visual impairment, or

(b) changes which infringe the right (provided by section 102) not to have the work subjected to derogatory treatment.

(5) "**Approved body**" has the meaning given in section 39(12).

(6) "**Lending**", in relation to a copy, means making it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will or may be returned.

(7) For the purposes of subsection (6), a loan is not to be treated as being for direct or indirect economic or commercial advantage if a charge is made for the loan which does not exceed the cost of making and supplying the copy.

(8) The definition of "**lending**" in section 22 does not apply for

the purposes of sections 39 and 40.

- (9) **"Visually impaired person"** means a person -
- (a) who is blind,
 - (b) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light,
 - (c) who is unable, through physical disability, to hold or manipulate a book, or
 - (d) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.
- (10) The Department may by regulations prescribe -
- (a) the form in which, and
 - (b) the procedure in accordance with which,

any notice required under section 40(7) or (8), or 41(1), must be given.

Education

Things done for purposes of instruction or examination.

44. (l) 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, if the copying -

- (a) is done by a person giving or receiving instruction,
- (b) is not by means of a reprographic process, and
- (c) is accompanied by a sufficient acknowledgment,

and provided that the instruction is for a non-commercial purpose.

(2) Copyright in a sound recording, film, or broadcast is not infringed 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 that the copying -

- (a) is done by a person giving or receiving instruction,
and
- (b) is accompanied by a sufficient acknowledgement,

and provided that the instruction is for a non-commercial purpose.

(3) Copyright in a literary, dramatic, musical or artistic work which has been made available to the public is not infringed by its being copied in the course of instruction or of preparation for instruction, provided that the copying-

- (a) is fair dealing with the work,
- (b) is done by a person giving or receiving instruction,

(c) is not done by means of a reprographic process, and

(d) is accompanied by a sufficient acknowledgement.

(4) The provisions of section 35(2) (works made available to the public) apply for the purposes of subsection (3) as they apply for the purposes of section 35(1).

(5) Copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions, provided that the questions are accompanied by a sufficient acknowledgment.

(6) No acknowledgement is required in connection with copying as mentioned in subsection (1), (2) or (3), or in connection with anything done for the purposes mentioned in subsection (5), where this would be impossible for reasons of practicality or otherwise.

(7) Subsection (5) does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.

(8) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing and, if that dealing infringes copyright, for all subsequent purposes.

For this purpose "**dealt with**" means -

- (a) sold or let for hire, offered or exposed for sale or hire,
or
- (b) communicated to the public, unless that communication, by virtue of subsection (5), is not an infringement of copyright.

Anthologies for educational use.

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

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

does not infringe the copyright in the work if the work itself is not intended for use in those establishments and the inclusion is accompanied by a sufficient acknowledgment.

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

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

- (a) shall be taken to include excerpts from works by him

in collaboration with another, and

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

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

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

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

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

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

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

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

Recording by educational establishments of broadcasts.

47. (1) A recording of a broadcast, or a copy of that 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 in any work included in it, provided that it is accompanied by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial.

(2) Copyright is not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of subsection (1) not an infringement of copyright, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.

(3) This section does not apply if, or to the extent that, there is a licensing scheme certified for the purposes of this section under section 179 providing for the grant of licences.

(4) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing and, if that dealing infringes copyright, for all subsequent purposes.

For this purpose "**dealt with**" means sold or let for hire, offered or exposed for sale or hire, or communicated from within the premises of an

educational establishment to any person situated outside those premises.

Reprographic copying by educational establishments of passages from published works.

48. (1) Reprographic copies of passages from published literary, dramatic or musical works may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work, provided that they are accompanied by a sufficient acknowledgement and the instruction is for a non-commercial purpose.

(2) No acknowledgement is required in connection with the making of copies as mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.

(3) Reprographic copies of passages from published editions may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the typographical arrangement of the edition.

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

(5) Copying is not authorised by this section if or to the extent that licences are available authorising the copying in question and the person making the copies knew or ought to have been aware of that fact.

(6) The terms of a licence granted to an educational establishment authorising the reprographic copying for the purposes of instruction of passages

from published works are of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted under this section.

(7) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing and, if that dealing infringes copyright, for all subsequent purposes.

For this purpose "**dealt with**" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

Lending of copies by educational establishments.

49. Copyright in a work is not infringed by the lending of copies of the work by an educational establishment.

Libraries and archives

Libraries and archives: introductory.

50. (1) In sections 51 to 58 (copying by librarians and archivists) -
- (a) references in any provision to a prescribed library or archive are to a library or archive prescribed for the purposes of that provision by regulations made by the Department, and
 - (b) references in any provision to the prescribed conditions are to the conditions so prescribed.
- (2) For the purposes of any of those provisions the regulations

may prescribe -

- (a) particular libraries or archives in the Bailiwick or in any other country, or
- (b) any class or description of such libraries or archives.

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

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

(4) Where a person requesting a copy makes a declaration which is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him -

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

(5) References in this section and in sections 51 to 58 to the librarian or archivist include a person acting on his behalf.

(6) The regulations may make different provision for different classes or descriptions of libraries or archives and for different purposes.

Copying by librarians: articles in periodicals.

51. (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in -

- (a) the text,
- (b) any illustrations accompanying the text, or
- (c) the typographical arrangement.

(2) The prescribed conditions shall include the following -

- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of -
 - (i) research for a non-commercial purpose, or
 - (ii) private study,

and will not use them for any other purpose,

- (b) that no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical, and

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

Copying by librarians: parts of published works.

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

- (a) the work,
- (b) any illustrations accompanying the work, or
- (c) the typographical arrangement.

(2) The prescribed conditions shall include the following -

- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of -
 - (i) research for non-commercial purposes, or
 - (ii) private study,

and will not use them for any other purpose,

- (b) that no person is furnished with more than one copy of the same material or with a copy of more than a

reasonable proportion of any work, and

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

Restriction on production of multiple copies of the same material.

53. (1) Regulations for the purposes of sections 51 and 52 (copying by librarian of article or part of published work) shall contain provision to the effect that a copy shall be supplied only to a person satisfying the librarian that his requirement is not related to any similar requirement of another person.

(2) The regulations may provide -

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

Lending of copies by libraries or archives.

54. Copyright in a work of any description is not infringed by the lending of a book by a library or archive specified in regulations made under section 86 and administered by the States of Guernsey, States of Alderney or Chief Pleas of Sark (or by any other library or archive designated by regulations of the Department) which is not conducted for profit, including the Guille-Allés Library, the Priaulx

Library and the States Archive Service.

Copying by librarians: supply of copies to other libraries.

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

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

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

(2) Subsection (1)(b) does 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 authorise the making of the copy.

Copying by librarians or archivists: replacement copies of works.

56. (1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive -

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

has been lost, destroyed or damaged,

without infringing the copyright in -

- (i) any literary, dramatic or musical work,
- (ii) any illustrations accompanying that work, or
- (iii) in the case of a published edition, the typographical arrangement.

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

Copying by librarians or archivists: certain unpublished works.

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

This section does not apply if -

- (a) the work had been published before the document was deposited in the library or archive, or
- (b) the copyright owner has prohibited copying of the work,

and at the time the copy is made the librarian or archivist making it is, or ought to be, aware of that fact.

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

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

58. If an article of cultural or historical importance or interest cannot lawfully be exported from the Bailiwick unless a copy of it is made and deposited in a library or archive administered by the States of Guernsey, States of Alderney or Chief Pleas of Sark (or in any other library or archive designated by regulations of the Department), it is not an infringement of any right conferred by this Ordinance to make that copy.

Legal deposit libraries.

59. (1) Copyright is not infringed by the copying of a work from the internet by a legal deposit library or person acting on its behalf if -

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- (a) the work is of a description prescribed by regulations made by the Department,
- (b) its publication on the internet, or a person publishing it there, is connected with the Bailiwick in a manner so prescribed, and
- (c) the copying is done in accordance with any conditions so prescribed.

(2) Copyright is not infringed by the doing of anything in relation to relevant material permitted to be done under regulations made under subsection (1) and done in accordance with any prescribed conditions.

(3) The Department may by regulations make provision excluding or modifying, in relation to prescribed activities done in relation to relevant material, the application of such of the provisions of this Ordinance as are prescribed.

(4) Regulations under subsection (3) may in particular make provision in relation to prescribed activities -

- (a) done for a prescribed purpose,
- (b) done by prescribed descriptions of reader,
- (c) done in relation to prescribed descriptions of relevant material,

(d) done otherwise than in accordance with prescribed conditions.

(5) Regulations under this section may make different provision for different purposes.

(6) In this section -

"legal deposit library" means any library or archive administered by the States of Guernsey, States of Alderney or Chief Pleas of Sark (or any other library or archive designated by regulations of the Department) which is not conducted for profit, and includes the Guille-Allés Library, the Priaulx Library and the States Archive Service,

"prescribed" means prescribed by regulations made by the Department,

"reader" means a person who, for the purposes of research or study and with the permission of a legal deposit library, is on library premises controlled by it,

"relevant material" means -

(a) a copy of a work published in a medium other than print,

(b) a copy of a computer program or any information necessary in order to access the work, and

- (c) a copy of any manual and other material that accompanies the work material.

Public administration

States and judicial proceedings.

60. (1) Copyright is not infringed by anything done for the purposes of proceedings of the States of Deliberation, the States of Alderney or the Chief Pleas of Sark, or for the purposes of judicial proceedings.

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

Tribunals of inquiry and statutory inquiries.

61. (1) Copyright is not infringed by anything done for the purposes of the proceedings of a tribunal of inquiry under the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949^d or a statutory inquiry.

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

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

^d Ordres en Conseil Vol. XIV, p. 45.

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

Material open to public inspection or on official register.

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

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

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

(4) The Department may by regulations provide that subsection (1), (2) or (3) shall, in the cases specified in the regulations, apply only to copies marked in such manner as may be so specified.

(5) The Department may by regulations provide that subsections (1) to (3) apply, to the extent and with any modifications as may be specified in the regulations -

- (a) to material made open to public inspection by -
 - (i) an international organisation specified in the regulations, or
 - (ii) a person so specified who has functions in the Bailiwick under an international agreement to which the United Kingdom is party and which extends to the Bailiwick, or
- (b) to a register maintained by an international organisation specified in the regulations,

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

(6) In this section -

"appropriate person" means the person required to make the material open to public inspection or, as the case may be, the person maintaining the register,

"statutory register" means a register maintained in pursuance of a statutory requirement, and

"statutory requirement" means a requirement imposed by or under

a statutory provision.

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

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

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

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

(4) In subsection (1) "**public business**" includes any activity carried on by the Crown or the States.

(5) This section has effect subject to any agreement to the contrary between the Crown or the States and the copyright owner.

Public records.

64. (1) Material which is comprised in the public records of the Island of Guernsey, the Island of Alderney or the Island of Sark may be copied, and (without prejudice to any other rule of law restricting the disclosure of information)

a copy may be supplied to any person, by or with the authority of any person who, in the course of his official duties, has custody of or access to the records or the information contained therein, without infringement of copyright.

(2) Public records in subsection (1) means the records kept for the purposes of or pursuant to its functions by any court, police force, department or committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark or other public authority in the Bailiwick.

Acts done under statutory authority.

65. (1) Where the doing of a particular act is specifically authorised by a statutory provision, whenever made, then, unless it provides otherwise, the doing of that act does not infringe copyright.

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

Backup copies.

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

(2) For the purposes of this section and sections 67 and 68 a person is a lawful user of a computer program if (whether under a licence to do any acts restricted by the copyright in the program or otherwise), he has a right to use the program.

(3) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to

prohibit or restrict the act (those terms being, by virtue of section 205, void).

Decompilation.

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

- (a) to convert it into a version expressed in a higher level language, or
- (b) incidentally in the course of so converting the program, to copy it,

(that is, to "**decompile**" it), if the conditions in subsection (2) are met.

(2) The conditions are that -

- (a) it is necessary to decompile the program to obtain the information necessary to create an independent program which can be operated with the program decompiled or with another program ("the permitted objective"), and
- (b) the information so obtained is not used for any purpose other than the permitted objective.

(3) In particular, the conditions in subsection (2) are not met if the lawful user -

- (a) has readily available to him the information necessary to achieve the permitted objective,

- (b) does not confine the decompiling to the acts necessary to achieve the permitted objective,
- (c) supplies the information obtained by the decompiling to any person to whom it is not necessary to supply it in order to achieve the permitted objective, or
- (d) uses the information to create a program which is substantially similar in its expression to the program decompiled or to do any act restricted by copyright.

(4) Where an act is permitted under this section it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (those terms being, by virtue of section 205, void).

Observing, studying and testing of computer programs.

68. (1) It is not an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

(2) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 205, void).

Other acts permitted to lawful users.

69. (1) It is not an infringement of copyright for a lawful user of a copy of a computer program to copy or adapt it, if the copying or adapting -

- (a) is necessary for his lawful use, and
- (b) is not prohibited under any term or condition of an agreement regulating the circumstances in which his use is lawful.

(2) The lawful use of a computer program includes copying it or adapting it for the purpose of correcting errors in it.

(3) This section does not apply to any copying or adapting permitted under section 66, 67 or 68.

Acts permitted in relation to databases.

70. (1) It is not an infringement of copyright in a database for a person who has a right to use the database or any part of the database (whether under a licence to do any of the acts restricted by the copyright in the database or otherwise) to do, in the exercise of that right, anything which is necessary for the purposes of access to and use of the contents of the database or of that part of the database.

(2) Where an act which would otherwise infringe copyright in a database is permitted under this section, it is irrelevant whether or not there exists any term or condition in any agreement which purports to prohibit or restrict the act (those terms being, by virtue of section 205, void).

Designs

Design documents and models.

71. (1) It is not an infringement of any copyright in a design

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

(2) It is not an infringement of the copyright to issue to the public, or include in a film, or communicate to the public, 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.

Effect of exploitation of design derived from artistic work.

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

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

(b) marketing those articles, in the Bailiwick or elsewhere.

(2) After the end of the period of 25 years from the end of the

calendar year in which the articles are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.

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

(4) The Department may by regulations 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 any articles of a primarily literary or artistic character it thinks fit.

(5) In this section -

(a) references to articles do not include films, and

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

Things done in reliance on registration of design.

73. (1) The copyright in an artistic work is not infringed by anything done -

- (a) in pursuance of an assignment or licence made or granted by a person registered under Part III of the Loi ayant rapport aux Patentes, Dessins et Marques de Fabrique, 1922 ("**the 1922 Law**") as the proprietor of a corresponding design, and
- (b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation or invalidation of the registration or for rectifying the relevant entry in the register of designs,

notwithstanding that the person registered as the proprietor was not the proprietor of the design for the purposes of the 1922 Law.

(2) In subsection (1) a "**corresponding design**", in relation to an artistic work, means a design within the meaning of the 1922 Law, which if applied to an article would produce something, which would be treated for the purposes of this Ordinance as a copy of the artistic work.

Typefaces

Use of typeface in ordinary course of printing.

74. (1) It is not an infringement of copyright in an artistic work consisting of the design of a typeface -

- (a) to use the typeface in the ordinary course of typing, composing text, typesetting or printing,
- (b) to possess an article for the purpose of that use, or

- (c) to do anything in relation to material produced by that use,

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

(2) The following provisions of this Ordinance apply in relation to persons making, importing or dealing with articles specifically designed or adapted for producing material in a particular typeface, or possessing those articles for the purpose of dealing with them, as if the production of material as mentioned in subsection (1) did infringe copyright in the artistic work consisting of the design of the typeface -

- (a) section 28 (secondary infringement: making, importing, possessing or dealing with article for making infringing copy),
- (b) sections 125 and 126 (order for delivery up and right of seizure),
- (c) section 134 (offence of making or possessing such an article), and
- (d) section 135 (order for delivery up in criminal proceedings).

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

Articles for producing material in particular typeface.

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

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

(3) In subsection (1) "marketed" means sold, let for hire or offered or exposed for sale or hire, in the Bailiwick or elsewhere.

Works in electronic form

Transfer of copies of works in electronic form.

76. (1) This subsection applies where a copy of 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 make copies of an adaptation, in connection with his use of it.

(2) If there are no express terms -

- (a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer, or

- (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

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

(3) Subsection (2) applies 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 on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.

Miscellaneous: literary, dramatic, musical and artistic works

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

77. (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 arrangements made at a time when -

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

- (ii) that the author died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.
- (2) Subsection (1)(b)(ii) does not apply in relation to -
- (a) a work in which Crown or States copyright subsists, or
 - (b) a work in which copyright originally vested in an international organisation by virtue of section 194 and in respect of which regulations under that section specify a copyright period longer than 70 years.
- (3) In relation to a work of joint authorship-
- (a) the reference in subsection (1) to its being possible to ascertain the identity of the author, shall be construed as a reference to its being possible to ascertain the identity of any of the authors, and
 - (b) the reference in subsection (1)(b)(ii) to the author having died, shall be construed as a reference to all the authors having died.

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

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

- (a) of reporting current events, or

- (b) of communicating to the public 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 of the material, and use the copy) for that purpose, if the conditions in subsection (2) are met.

(2) The conditions 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,
- (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.

Public reading or recitation.

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

(2) Copyright in a work is not infringed by the making of a sound recording, or the communication to the public, of a reading or recitation which by virtue of subsection (1) does not infringe copyright in the work, if the recording or communication to the public consists mainly of material in relation to which it is not necessary to rely on that subsection.

Abstracts of scientific or technical articles.

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

(2) This section does not apply if, or to the extent that, there is a licensing scheme certified for the purposes of this section under section 179 providing for the grant of licences.

Recordings of folksongs.

81. (1) A sound recording of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body, without infringing any copyright in the words as a literary work or in the accompanying musical work, if the conditions in subsection (2) are met.

(2) The conditions are that -

- (a) the words are unpublished and of unknown authorship at the time the recording is made,
- (b) the making of the recording does not infringe any other copyright, and

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

(3) Copies of a sound recording made in reliance on subsection (1) and included in an archive maintained by a designated body may, if the prescribed conditions are met, be made and supplied by the archivist without infringing copyright in the recording or the works included in it.

(4) The prescribed conditions shall include the following -

(a) that copies are only supplied to persons satisfying the archivist that they require them for purposes of -

(i) research for a non-commercial purpose, or

(ii) private study,

and will not use them for any other purpose, and

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

(5) In this section -

(a) "**designated**" means designated for the purposes of this section by regulations of the Department, which shall not designate a body unless satisfied that it is not established or conducted for profit,

(b) "**prescribed**" means prescribed for the purposes of this section by regulations of the Department, and

- (c) references to the archivist include a person acting on his behalf.

Representation of certain artistic works on public display.

82. (1) This section applies to -

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

(2) The copyright in any of those works is not infringed by -

- (a) making a graphic work representing it,
- (b) making a photograph or film of it, or
- (c) making a broadcast of a visual image of it.

(3) Nor is the copyright infringed by the issue to the public of copies, or the communication to the public, of anything whose making was, by virtue of this section, not an infringement of the copyright.

Advertisement of sale of artistic work.

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

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with for any other purpose, it shall be treated as an infringing copy for the purposes of that dealing and, if that dealing infringes copyright, for all subsequent purposes.

For this purpose "**dealt with**" means sold or let for hire, offered or exposed for sale or hire, exhibited in public, distributed or communicated to the public.

Making of subsequent works by same artist.

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

Reconstruction of buildings.

85. Anything done for the purposes of reconstructing a building does not infringe any copyright -

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

Miscellaneous: lending of works and sound recordings, etc

Lending to public of copies of certain works.

86. (1) The Department may, by regulations, provide that in such cases as may be specified in the regulations, the lending to the public of copies of literary, dramatic, musical or artistic works, sound recordings or films, shall be

treated as licensed by the copyright owner subject only to the payment of a reasonable royalty or other payment, as agreed or determined in default of agreement, by the Ordinary Court.

(2) No regulations shall apply if, or to the extent that, there is a licensing scheme certified for the purposes of this section under section 179 providing for the grant of licences.

(3) Regulations may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies lent, the lender or the circumstances of the lending.

(4) Nothing in this section affects any liability under section 27 (secondary infringement: possessing or dealing with infringing copy) in respect of the lending of infringing copies.

Miscellaneous: films and sound recordings

Films: acts permitted on assumption as to expiry of copyright, etc.

87. (1) Copyright in a film is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when -

(a) it is not possible by reasonable inquiry to ascertain the identity of any of the persons referred to in section 15(2)(a) to (d) (persons by reference to whose life the copyright period is ascertained), and

(b) it is reasonable to assume -

(i) that copyright has expired, or

- (ii) that the last to die of those persons, died 70 years or more before the beginning of the calendar year in which the act is done, or the arrangements are made.

(2) Subsection (1)(b)(ii) does not apply in relation to -

- (a) a film in which Crown or States copyright subsists, or
- (b) a film in which copyright originally vested in an international organisation by virtue of section 194 and in respect of which regulations under that section specify a copyright period longer than 70 years.

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

88. (1) It is not an infringement of the copyright in a sound recording to play it as part of the activities of, or for the benefit of, a club, society or other organisation if the conditions in subsection (2) are met.

(2) The conditions are -

- (a) that the organisation is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare,
- (b) that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain,

- (c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation, and
- (d) that the proceeds from any goods or services sold by, or on behalf of, the organisation -
 - (i) in the place where the sound recording is heard, and
 - (ii) on the occasion when the sound recording is played,

are applied solely for the purposes of the organisation.

Miscellaneous: broadcasts

Incidental recording for purposes of broadcast.

89. (1) This section applies where by virtue of a licence or assignment of copyright a person is authorised to broadcast -

- (a) a literary, dramatic or musical work, or an adaptation of that work,
 - (b) an artistic work, or
 - (c) a sound recording or film.
- (2) The authorised person shall by virtue of this section be treated

as licensed by the owner of the copyright in the work to do or authorise any of the following for the purposes of the broadcast -

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

(3) That licence is subject to the condition that the recording, film, photograph or copy in question -

- (a) shall not be used for any other purpose, and
- (b) shall be destroyed within 28 days of being first used for broadcasting the work.

(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 broken.

Recording for purposes of supervision and control of broadcasts and other services.

90. (1) Copyright is not infringed by the making or use by the British Broadcasting Corporation or other broadcaster specified in writing by the Department, for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.

(2) The rights conferred by this Ordinance are not infringed by anything done in pursuance of -

- (a) section 167(1) of the Broadcasting Act 1990^e or section 115(4) or (6) or 117 of the Broadcasting Act 1996,
- (b) a condition which, by virtue of section 334(1) of the Communications Act 2003^f, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996,
- (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of OFCOM to require

^e An Act of Parliament; as extended to the Bailiwick by the Broadcasting Act 1990 (Guernsey) (No. 2) Order 1991 (S.I. 1991 No. 1709).

^f An Act of Parliament; as extended to the Bailiwick by the Communications (Bailiwick of Guernsey) Order 2003 (S.I. 2003/3195), as amended by the Communications (Bailiwick of Guernsey) Order 2004 (S.I. 2004/307), the Communications (Bailiwick of Guernsey) (No. 2) Order 2004 (S.I. 2004/718), the Communications (Bailiwick of Guernsey) (No. 3) Order 2004 (S.I. 2004/1116) and the Communications (Bailiwick of Guernsey) (Amendment) Order 2005 (S.I. 2005/856).

production of recordings, etc),

(d) section 334(3) of the Communications Act 2003.

(3) The rights conferred by this Ordinance are not infringed by the use by OFCOM in connection with the performance of any of their functions under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003 of -

(a) any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts, or

(b) any existing material which is transferred to them by a scheme made under section 30 of the Communications Act 2003.

(4) In subsection (3), "**existing material**" means -

(a) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996, and

(b) any recording or transcript which was provided to the Broadcasting Standards Commission under section 115(4) or (6) or 116(5) of the Broadcasting Act 1996.

Recording for purposes of time-shifting.

91. (1) The making in domestic premises for private and domestic use of a recording of a broadcast 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 in any work included in it.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with -

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

(3) In subsection (2) "**dealt with**" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

Photographs of broadcasts

92. (1) The making for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any copyright in the broadcast or in any film included in it.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with -

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

an infringing copy for all subsequent purposes.

(3) In subsection (2) "**dealt with**" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

Free public showing or playing of broadcast.

93. (1) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any copyright in -

- (a) the broadcast,
- (b) any sound recording (except so far as it is an excepted sound recording) included in it, or
- (c) any film included in it.

(2) For the purposes of this Ordinance an "**excepted sound recording**" is a sound recording -

- (a) whose author is not the author of the broadcast in which it is included, and
- (b) which is a recording of music with or without words spoken or sung.

(3) Where by virtue of subsection (1) the copyright in a broadcast shown or played in public is not infringed, copyright in any excepted sound recording included in it is not infringed if the playing or showing of that broadcast in public -

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- (a) forms part of the activities of an organisation that is not established or conducted for profit, or
 - (b) is necessary for the purposes of -
 - (i) repairing equipment for the reception of broadcasts,
 - (ii) demonstrating that a repair to such equipment has been carried out, or
 - (iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.
- (4) The audience shall be treated as having paid for admission to a place -
- (a) if they have paid for admission to a place of which that place forms part, or
 - (b) if goods or services are supplied at that place (or a place of which it forms part) -
 - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast, or
 - (ii) at prices exceeding those usually charged there

and which are partly attributable to those facilities.

(5) The following shall not be regarded as having paid for admission to a place -

- (a) persons admitted as residents or inmates of the place,
- (b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts is only incidental to the main purposes of the club or society.

(6) Where the making of the broadcast was an infringement of the copyright in a sound recording or film, the fact that it was heard or seen in public by the reception of the broadcast shall be taken into account in assessing the damages for that infringement.

Reception and re-transmission of wireless broadcast by cable.

94. (1) This section applies where a wireless broadcast made from a place in the Bailiwick or the United Kingdom is received and immediately re-transmitted by cable.

(2) The copyright in the broadcast is not infringed -

- (a) if the re-transmission by cable is in pursuance of a relevant requirement, or
- (b) if and to the extent that the broadcast is made for

reception in the area in which it is re-transmitted by cable and forms part of a qualifying service.

(3) The copyright in any work included in the broadcast is not infringed if, and to the extent that, the broadcast is made for reception in the area in which it is re-transmitted by cable, but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted by cable shall be taken into account in assessing the damages for that infringement.

(4) Where -

- (a) the re-transmission by cable is in pursuance of a relevant requirement, but
- (b) to any extent, the area in which the re-transmission by cable take place ("**the cable area**") falls outside the area for reception in which the broadcast is made ("**the broadcast area**"),

the re-transmission by cable (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any work included in the broadcast shall, subject to subsection (5), be treated as licensed by the owner of the copyright in the work, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the re-transmission by cable of the broadcast as may be agreed or determined in default of agreement by the Ordinary Court.

(5) Subsection (4) does not apply if, or to the extent that, the re-transmission of the work by cable is (apart from that subsection) licensed by the

owner of the copyright in the work.

(6) In this section "**qualifying service**" means, subject to subsection (8), any of the following services -

- (a) a regional or national Channel 3 service,
- (b) Channel 4, Channel 5 and S4C,
- (c) the public teletext service,
- (d) S4C Digital,
- (e) the television broadcasting services and teletext service of the British Broadcasting Corporation, and
- (f) any other service specified in writing by the Department,

and expressions used in this subsection have the same meanings as in Part 3 of the Communications Act 2003.

(7) In this section "**relevant requirement**" means a requirement imposed by a general condition (within the meaning of Chapter 1 of Part 2 of the Communications Act 2003) the setting of which is authorised under section 64 of that Act (must-carry obligations).

(8) The Department may by regulations -

- (a) provide that in specified cases subsection (3) is to

apply in relation to broadcasts of a specified description which are not made as mentioned in that subsection, or

- (b) exclude the application of that subsection in relation to broadcasts of a specified description made as mentioned in that subsection.

(9) Where the Department exercises the power conferred by subsection (8)(b) in relation to broadcasts of any description, the regulations may also provide for subsection (4) to apply, subject to such modifications as may be specified in the regulations, in relation to broadcasts of that description.

(10) Regulations under this section may contain such transitional provision as appears to the Department to be appropriate.

(11) In this section references to re-transmission by cable include the transmission of microwave energy between terrestrial fixed points.

Royalty or other sum payable in pursuance of section 94(4).

95. (1) An application to settle the royalty or other sum payable in pursuance of subsection (4) of section 94 (reception and re-transmission of wireless broadcast by cable) may be made to the Ordinary Court by the copyright owner or the person making the broadcast.

(2) The Ordinary Court 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 Ordinary Court to vary the order, and the Ordinary Court 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 Ordinary Court, 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 Ordinary Court.

Provision of sub-titled copies of broadcast.

96. (1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make copies of broadcasts and issue or lend copies to the public, without infringing any copyright in the broadcasts or works included in them.

(2) A "**designated body**" means a body designated for the purposes of this section by regulations of the Department, which shall not designate a body unless satisfied that it is not established or conducted for profit.

(3) This section does not apply if, or to the extent that, there is a licensing scheme certified for the purposes of this section under section 179 providing for the grant of licences.

Recording for archival purposes.

97. (1) A recording of a broadcast of a designated class, or a copy of that 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 in any work included in it.

(2) In subsection (1) "**designated**" means designated for the purposes of this section by regulations of the Department, which shall not designate a body unless satisfied that it is not established or conducted for profit.

Adaptations

Adaptations.

98. 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.

PART IV
MORAL RIGHTS

Right to be identified as author or director

Right to be identified as author or director.

99. (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right to be identified as the author or director of the work in the circumstances mentioned in this section but the right is not infringed unless it has been asserted in accordance with section 100.

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

- (a) the work is published commercially, performed in public, or communicated to the public, or

- (b) copies of a film or sound recording including the work are issued to the public,

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

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

- (a) the work is published commercially,
- (b) copies of a sound recording of the work are issued to the public, or
- (c) a film of which the sound-track includes the work is shown in public or copies of that film are issued to the public,

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

(4) The author of an artistic work has the right to be identified whenever -

- (a) the work is published commercially or exhibited in public, or a visual image of it is communicated to the public,

- (b) a film including a visual image of the work is shown in public or copies of the film are issued to the public, or
- (c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it, or of a photograph of it, are issued to the public.

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

(6) The director of a film has the right to be identified whenever the film is shown in public, or communicated to the public, or copies of the film are issued to the public.

- (7) The right of the author or director under this section is -
- (a) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified, clearly and reasonably prominently, in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy,
 - (b) in the case of identification on a building, to be identified, clearly and reasonably prominently, by

appropriate means visible to persons entering or approaching the building, and

- (c) in any other case, to be identified, clearly and reasonable prominently, in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, the exhibition, the showing, or the communication to the public in question,

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

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

(9) This section has effect subject to section 101 (exceptions to right).

Requirement that right be asserted.

100. (1) A person does not infringe the right conferred by section 99 (right to be identified as author or director) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.

(2) The right may be asserted generally, or in relation to any specified act or description of acts -

- (a) on an assignment of copyright in the work, by including in the instrument effecting the assignment a

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statement that the author or director asserts in relation to that work his right to be identified, or

(b) by instrument in writing signed by the author or director.

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

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

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

(4) The persons bound by an assertion of the right under subsection (2) or (3) are -

(a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through him, whether or not he has notice of the assertion,

- (b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought,
- (c) in the case of an assertion under subsection (3)(a), anyone into whose hands that original or copy comes, whether or not the identification is still present or visible,
- (d) in the case of an assertion under subsection (3)(b), the licensee and anyone into whose hands a copy made in pursuance of the licence comes, whether or not he has notice of the assertion.

(5) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

Exceptions to right.

101. (1) The right conferred by section 99 (right to be identified as author or director) is subject to the following exceptions.

(2) The right does not apply in relation to the following descriptions of work -

- (a) a computer program,
- (b) the design of a typeface, and
- (c) any computer-generated work.

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(3) The right does not apply to anything done by or with the authority of the copyright owner where copyright in the work originally vested in the author's employer by virtue of section 12(2) (works produced in course of employment).

(4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work -

- (a) section 35 (fair dealing for certain purposes), so far as it relates to the reporting of current events by means of a sound recording, film, or broadcast,
- (b) section 37 (incidental inclusion of work in an artistic work, sound recording, film, or broadcast),
- (c) section 44(3) (examination questions),
- (d) section 60 (States and judicial proceedings),
- (e) section 61(1) or (2) (tribunals of inquiry and statutory inquiries),
- (f) section 71 (use of design documents and models),
- (g) section 72 (effect of exploitation of design derived from artistic work), and
- (h) section 77 or section 87 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright, etc.).

(5) The right does not apply in relation to any work made for the purpose of reporting current events.

(6) The right does not apply in relation to the publication in -

- (a) a newspaper, magazine or similar periodical, or
- (b) an encyclopaedia, dictionary, yearbook or other collective work of reference,

of a literary, dramatic, musical or artistic work made for the purposes of that publication or made available with the consent of the author for the purposes of that publication.

(7) The right does not apply in relation to -

- (a) a work in which Crown copyright or States copyright subsists, or
- (b) a work in which copyright originally vested in an international organisation by virtue of section 194,

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

Right to object to derogatory treatment of work

Right to object to derogatory treatment of work.

102. (1) The author of a copyright literary, dramatic, musical or

artistic work, and the director of a copyright film, has the right in the circumstances described in this section not to have his work subjected to derogatory treatment.

(2) For the purposes of this section "**treatment**" of a work means any addition to, deletion from or alteration to or adaptation of the work, other than -

- (a) a translation of a literary or dramatic work, or
- (b) an arrangement or transcription of a musical work involving no more than a change of key or register,

and the treatment of a work is "**derogatory**" if it amounts to a distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director, and in the following provisions of this section references to a "**derogatory treatment**" of a work shall be construed accordingly.

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

- (a) publishes commercially, performs in public, or communicates to the public, a derogatory treatment of the work, or
- (b) issues to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.

(4) In the case of an artistic work the right is infringed by a person who -

- (a) publishes commercially or exhibits in public a

derogatory treatment of the work, or communicates to the public a visual image of a derogatory treatment of the work,

(b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of that film, or

(c) in the case of -

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

(ii) a sculpture, or

(iii) a work of artistic craftsmanship,

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

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

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

(a) shows in public, or communicates to the public, a derogatory treatment of the film, or

- (b) issues to the public copies of a derogatory treatment of the film.

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

(8) This section has effect subject to sections 103 and 104 (exceptions to and qualifications of right).

Exceptions to right.

103. (1) The right conferred by section 102 (right to object to derogatory treatment of work) is subject to the following exceptions.

(2) The right does not apply to a computer program or to any computer-generated work.

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

(4) The right does not apply in relation to the publication in -

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

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

of a literary, dramatic, musical or artistic work made for the purposes of that

publication or made available with the consent of the author for the purposes of such publication nor does the right apply in relation to any subsequent exploitation elsewhere of that work without any modification of the published version.

(5) The right is not infringed by an act which by virtue of section 77 or section 87 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright, etc.) would not infringe copyright.

(6) The right is not infringed by anything done for the purpose of-

- (a) avoiding the commission of an offence,
- (b) complying with a duty imposed by or under an enactment, or
- (c) in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste or decency or which is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling,

if, where the author or director is identified at the time of the relevant act or has previously been identified in or on published copies of the work, there is a sufficient disclaimer.

Qualification of right in certain cases.

104. (1) This section applies to -

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- (a) works in which copyright originally vested in the author's employer by virtue of section 12(2) (works produced in course of employment),
- (b) works in which Crown copyright or States copyright subsists, and
- (c) works in which copyright originally vested in an international organisation by virtue of section 194.

(2) The right conferred by section 102 (right to object to derogatory treatment of work) does not apply to anything done in relation to that work by or with the authority of the copyright owner unless the author or director -

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

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

Infringement of right by possessing or dealing with infringing article.

105. (1) The right conferred by section 102 (right to object to derogatory treatment of work) is infringed by a person who -

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

- (c) in the course of a business exhibits in public or distributes, or
- (d) distributes otherwise than in the course of a business so as to affect prejudicially the honour or reputation of the author or director,

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

(2) An "**infringing article**" means a work or a copy of a work which -

- (a) has been subjected to derogatory treatment within the meaning of section 102, and
- (b) has been or is likely to be the subject of any of the acts mentioned in that section in circumstances infringing that right.

False attribution of work

False attribution of work.

106. (1) A person has the right in the circumstances mentioned in this section -

- (a) not to have a literary, dramatic, musical or artistic work falsely attributed to him as author, and

- (b) not to have a film falsely attributed to him as director,

and in this section an "**attribution**", in relation to such a work, means a statement (express or implied) as to who is the author or director.

- (2) The right is infringed by a person who -

- (a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution, or

- (b) exhibits in public an artistic work, or a copy of an artistic work, in or on which there is a false attribution.

- (3) 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, or communicates it to the public, as being the work of a person, or

- (b) in the case of a film, shows it in public, or communicates it to the public, as being directed by a person,

knowing or having reason to believe that the attribution is false.

- (4) The right is also infringed by the issue to the public or public display of material containing a false attribution in connection with any of the acts mentioned in subsection (2) or (3).

(5) 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 of any of the descriptions mentioned in subsection (1) in or on which there is a false attribution, or
- (b) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it,

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

(6) In the case of an artistic work 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 that work as being a copy of the unaltered work of the author,

knowing or having reason to believe that that is not the case.

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

- (8) This section applies where, contrary to the fact -
- (a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person, or
 - (b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,

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

Right to privacy of certain photographs and films

Right to privacy of certain photographs and films.

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

- (a) copies of the work issued to the public,
- (b) the work exhibited or shown in public, or
- (c) the work communicated to the public,

and, except as mentioned in subsection (2), a person who does or authorises the doing of any of those acts infringes that right.

(2) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work -

- (a) section 37 (incidental inclusion of work in artistic work, film, or broadcast),
- (b) section 60 (States and judicial proceedings),
- (c) section 61 (tribunals of inquiry and statutory inquiries),
- (d) section 65 (acts done under statutory authority), and
- (e) section 77 or 87 (anonymous or pseudonymous works, acts permitted on assumptions as to expiry of copyright, etc.).

Supplementary

Duration of rights.

108. (1) The rights conferred by section 99 (right to be identified as author or director), section 102 (right to object to derogatory treatment of work) and section 107 (right to privacy of certain photographs and films) continue to subsist so long as copyright subsists in the work.

(2) The right conferred by section 106 (false attribution) continues to subsist until 20 years after a person's death.

Consent and waiver of rights.

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

(2) Any of those rights may be waived by instrument in writing

signed by the person giving up the right.

- (3) A waiver -
 - (a) may relate to a specific work, to works of a specified description or to works generally, and may relate to existing or future works, and
 - (b) may be conditional or unconditional and may be expressed to be subject to revocation,

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

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

Application of provisions to joint works.

110. (1) The right conferred by section 99 (right to be identified as author or director) is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author and shall be asserted in accordance with section 100 by each joint author in relation to himself.

(2) The right conferred by section 102 (right to object to derogatory treatment of work) 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.

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(3) A waiver under section 109 of those rights by one joint author does not affect the rights of the other joint authors.

(4) The right conferred by section 106 (false attribution) is infringed, in the circumstances mentioned in that section -

(a) by any false statement as to the authorship of a work of joint authorship, and

(b) by the false attribution of joint authorship in relation to a work of sole authorship,

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

(5) The above provisions apply (with any necessary adaptations) in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship,

A film is "**jointly directed**" if it is made by the collaboration of two or more directors and the contribution of each director is not distinct from that of the other director or directors.

(6) The right conferred by section 107 (right to privacy of certain photographs and films) 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 109 by one of them does not affect the rights of the others.

Application of provisions to parts of works.

111. (1) The rights conferred by section 99 (right to be identified as author or director) and section 107 (right to privacy of certain photographs and films) apply in relation to the whole or any substantial part of a work.

(2) The rights conferred by section 102 (right to object to derogatory treatment of work) and section 106 (false attribution) apply in relation to the whole or any part of a work.

PART V

DEALINGS WITH RIGHTS IN COPYRIGHT WORKS

Copyright

Assignment and licences.

112. (1) Copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or movable property.

(2) An assignment or other transmission of copyright may be partial so as to apply -

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

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

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

Prospective ownership of copyright.

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

(2) In this Ordinance -

"future copyright" means copyright which will or may come into existence in respect of a future work or class of works or on the occurrence of a future event, and

"prospective owner" shall be construed accordingly, and includes a person who is prospectively entitled to copyright by virtue of the agreement mentioned in subsection (1).

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

Exclusive licences.

114. (1) In this Ordinance an "**exclusive licence**" means a licence in writing signed by or on behalf of the copyright owner authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the copyright owner.

(2) 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.

Copyright to pass under will with unpublished work.

115. Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise -

- (a) to an original document or other material thing recording or embodying a literary, dramatic, musical or artistic work which was not published before the death of the testator, or
- (b) an original material thing containing a sound recording or film which was not published before the death of the testator,

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

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

116. (1) Where an agreement concerning film production is concluded between an author and a film producer, the author shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a copy of the author's work in the film.

(2) In this section "**author**" means an author, or prospective author, of a literary, dramatic, musical or artistic work.

(3) Subsection (1) does not apply to any rental right in relation to the film arising by virtue of the inclusion in the film of the screenplay, the dialogue or music specifically created for and used in the film.

(4) Where this section applies, the absence of signature by or on behalf of the author does not exclude the operation of section 113(1) (effect of purported assignment of future copyright).

(5) The reference in subsection (1) to an agreement concluded between an author and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.

(6) Section 117 (right to equitable remuneration on transfer of rental right) applies where there is a presumed transfer by virtue of this section as in the case of an actual transfer.

Right to equitable remuneration

Right to equitable remuneration where rental right transferred.

117. (1) Where an author to whom this section applies has transferred his rental right concerning a sound recording or a film to the producer of the sound recording or film, he retains the right to equitable remuneration for the rental, and the authors to whom this section applies are -

- (a) the author of a literary, dramatic, musical or artistic work, and
- (b) the principal director of a film.

(2) The right to equitable remuneration under this section may not be assigned by the author except to a collecting society for the purpose of enabling it to enforce the right on his behalf, but the right is transmissible by testamentary disposition or by operation of law as personal or movable property, and it may be assigned or further transmitted by any person into whose hands it passes.

(3) Equitable remuneration under this section is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his.

(4) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to section 118 (reference of amount to Ordinary Court)

(5) An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this section.

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

(7) In this section a "**collecting society**" means a society or other organisation which has as its main object or as one of its main objects the exercise of the right to equitable remuneration under this section on behalf of any author.

Reference of amount to Ordinary Court

Equitable remuneration: reference of amount to Ordinary Court.

118. (1) In default of agreement as to the amount payable by way of equitable remuneration under section 117, the person by or to whom it is payable may apply to the Ordinary Court to determine the amount.

(2) A person to or by whom equitable remuneration is payable under that section may apply to the Ordinary Court -

(a) to vary any agreement as to the amount payable, or

(b) to vary any previous determination of the Ordinary Court as to that matter.

(3) On an application under this section the Ordinary Court shall consider the matter and make any order as to the method of calculating and paying equitable remuneration it determines to be reasonable in the circumstances, taking into account the importance of the contribution of the author of the film or sound recording.

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

(5) An agreement is of no effect in so far as it purports to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Ordinary Court under this section.

Moral rights

Moral rights not assignable.

119. The rights conferred by Part IV (Moral rights) are not assignable.

Transmission of moral rights on death.

120. (1) On the death of a person entitled to the right conferred by section 99 (right to be identified as author or director), section 102 (right to object to derogatory treatment of work) or section 107 (right to privacy of certain photographs and films) -

- (a) the right passes to the person as he, by testamentary disposition, specifically directs,
- (b) if there is no 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
- (c) if, or to the extent that, the right does not pass under paragraph (a) or (b), it is exercisable by his personal representatives.

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

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

any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.

(3) Where by virtue of subsection (1)(a) or (b) a right becomes exercisable by more than one person -

- (a) it may, in the case of the right conferred by section 99 (right to be identified as author or director), be asserted by any of them,
- (b) it is, in the case of the right conferred by section 102 (right to object to derogatory treatment of work) or section 107 (right to privacy of certain photographs and films), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question, and
- (c) any waiver of the right in accordance with section 109 by one of them does not affect the rights of the others.

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

(5) Any infringement after a person's death of the right conferred by section 106 (false attribution) 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 VI

REMEDIES FOR INFRINGEMENT

Rights and remedies of copyright owner

Infringement actionable by copyright owner.

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

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

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

Damages in infringement action.

122. (1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason

to believe, that the copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

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

- (a) the flagrancy of the infringement, and
- (b) any benefit accruing to the defendant by reason of the infringement,

award any additional damages that the justice of the case requires.

Injunctions against service providers

123. (1) The court may grant an injunction against a service provider where that service provider has actual knowledge of another person using their service to infringe copyright.

(2) In this Ordinance "**service provider**" has the meaning given by (as the case may require) -

- (a) section 17 of the Electronic Transactions (Guernsey) Law, 2000^g,
- (b) section 17 of the Electronic Transactions (Alderney) Law, 2001^h, or

^g Order in Council No. VIII of 2000.

- (c) section 17 of the Electronic Transactions (Sark) Law, 2001ⁱ.

Factors to consider in determining actual knowledge.

124. In determining whether a service provider has actual knowledge for the purpose of section 123, the court shall take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, shall have regard to -

- (a) whether a service provider has received notice, which may be through a means of contact made available in accordance with section 8 of the Law referred to (as the case may require) in section 123(2)(a), (b) or (c),
- (b) the extent to which any such notice includes -
 - (i) the full name and address of the sender of the notice, and
 - (ii) details of the infringement in question.

Order for delivery up.

125. (1) Where a person -

- (a) has an infringing copy of a work in his possession,

^h Order in Council No. XXVI of 2001.

ⁱ Order in Council No. X of 2001.

custody or control in the course of a business, or

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

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

(2) An application shall not be made after the end of the period specified in section 140 (period after which remedy of delivery up not available), and no order shall be made unless the court makes, or it appears to the court that there are grounds for making, an order under section 141 (disposal of infringing copy or other article).

(3) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall, if an order under section 141 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

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

Right to seize infringing copies and other articles.

126. (1) An infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the

copyright owner would be entitled to apply for an order under section 125, may be seized and detained by him or a person authorised by him.

The right to seize and detain is exercisable subject to the following conditions and is subject to any decision of the court under section 141.

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

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

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

(5) In this section -

"**premises**" includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft, and

"**prescribed**" means prescribed by regulations of the Department.

Rights and remedies of exclusive licensee

Rights and remedies of exclusive licensee.

127. (1) An exclusive licensee has, except against the copyright

owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

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

(3) 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.

Certain infringements actionable by a non-exclusive licensee.

128. (1) A non-exclusive licensee may bring an action for infringement of copyright if -

(a) the infringing act was directly connected to a prior licensed act of the licensee, and

(b) the licence -

(i) is in writing and is signed by or on behalf of the copyright owner, and

(ii) expressly grants the non-exclusive licensee a right of action under this section.

(2) In an action brought under this section, the non-exclusive licensee shall have the same rights and remedies available to him as the copyright owner would have had if he had brought the action.

(3) The rights granted under this section are concurrent with those of the copyright owner and references in the relevant provisions of this Ordinance to the copyright owner shall be construed accordingly.

(4) In an action brought by a non-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.

(5) Subsections (1) to (4) of section 129 shall apply to a non-exclusive licensee who has a right of action by virtue of this section as it applies to an exclusive licensee.

(6) In this section a "**non-exclusive licensee**" means the holder of a licence authorising the licensee to exercise a right which remains exercisable by the copyright owner.

Exercise of concurrent rights.

129. (1) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the copyright owner or the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.

(2) A copyright owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(3) The above provisions do not affect the granting of interlocutory relief on an application by a copyright owner or exclusive licensee

alone.

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

(a) the court shall in assessing damages take into account -

(i) the terms of the licence, and

(ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement,

(b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement, and

(c) the court shall, if an account of profits is directed, apportion the profits between them as the court considers just, subject to any agreement between them,

and these provisions apply whether or not the copyright owner and the exclusive licensee are both parties to the action.

(5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 125 (order for delivery up) or exercising the right conferred by section 126 (right of seizure) and

the court may on the application of the licensee make such order under section 125 or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right conferred by section 126, as it thinks fit having regard to the terms of the licence.

Remedies for infringement of moral rights

Remedies for infringement of moral rights.

130. (1) An infringement of a right conferred by Part IV (moral rights) is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) In proceedings for infringement of the right conferred by section 102 (right to object to derogatory treatment of work) the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act, unless a disclaimer is made, in the terms and in a manner approved by the court, dissociating the author or director from the treatment of the work.

Presumptions

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

131. (1) The following presumptions apply in proceedings brought by virtue of this Part with respect to a literary, dramatic, musical or artistic work.

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

(a) to be the author of the work,

(b) to have made it in circumstances not falling within section 12(2), 189, 191 or 194 (works produced in course of employment, Crown copyright, States copyright or copyright of international organisations).

(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) the work qualifies for copyright protection by virtue of section 183 (qualification by reference to country of first publication), and

(b) a name purporting to be that of the publisher appeared on copies of the work as first published,

the person whose name appeared shall be presumed, until the contrary is proved, to have been the owner of the copyright at the time of publication.

(5) If the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed, in the absence of evidence to the contrary -

(a) that the work is an original work, and

(b) that the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

Presumption relevant to sound recording and films.

132. (1) In proceedings brought by virtue of this Part with respect to a sound recording, where copies of the recording issued to the public bear a label or other mark stating -

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

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

(2) In proceedings brought by virtue of this Part with respect to a film, where copies of the film as issued to the public bear a statement -

- (a) that a named person was the director or producer of the film,
- (b) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film,
- (c) that a named person was the owner of the copyright in the film at the date of issue of the copies, or
- (d) that the film was first published in a specified year or

in a specified country,

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

(3) In proceedings brought by virtue of this Part with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement -

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

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

(4) The above presumptions apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.

(5) In proceedings brought by virtue of this Part with respect to a film, where the film as shown in public, or communicated to the public, bears a statement -

- (a) that a named person was the director or producer of the film,

- (b) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film, or
- (c) that a named person was the owner of copyright in the film immediately after it was made,

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

(6) The presumption in subsection (5) applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public or communicated to the public.

(7) For the purposes of this section, a statement that a person was the director of a film shall be taken, unless a contrary indication appears, as meaning that he was the principal director of the film.

Presumptions relevant to works subject to Crown or States copyright.

133. In proceedings brought by virtue of this Part with respect to a literary, dramatic or musical work in which Crown or States copyright subsists, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct in the absence of evidence to the contrary.

Offences

Criminal liability for making or dealing with infringing articles, etc.

134. (1) A person commits an offence who, without the licence of the copyright owner -

- (a) makes for sale or hire,
- (b) imports the article into the Bailiwick otherwise than for his private and domestic use,
- (c) possesses the article in the course of a business with a view to committing any act infringing the copyright,
- (d) in the course of a business -
 - (i) sells or lets for hire,
 - (ii) offers or exposes for sale or hire,
 - (iii) exhibits in public, or
 - (iv) distributes, or
- (e) distributes otherwise than in the course of a business to an extent 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 a copyright work.

(2) A person commits an offence who -

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- (a) makes an article specifically designed or adapted for making copies of a particular copyright work, or
- (b) has that article in his possession,

knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.

(3) A person who infringes copyright in a work by communicating the work to the public -

- (a) in the course of a business, or
- (b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

commits an offence if he knows or has reason to believe that, by doing so, he is infringing copyright in that work.

(4) Where copyright is infringed (otherwise than by reception of a communication to the public) -

- (a) by the public performance of a literary, dramatic or musical work, or
- (b) by the playing or showing in public of a sound recording or film,

any person who caused the work to be so performed, played or shown is guilty of

an offence if he knew or had reason to believe that copyright would be infringed.

(5) A person guilty of an offence under subsection (1)(a), (b), (d)(iv) or (e) is liable -

(a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the uniform scale or both,

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding ten years or both.

(6) A person guilty of an offence under subsection (3) is liable -

(a) on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the uniform scale or both,

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both.

(7) A person guilty of any other offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the uniform scale or both.

(8) Sections 131 to 133 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section, but without prejudice to their application in proceedings for an order under section 135.

Order for delivery up in criminal proceedings.

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 -

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

order that the infringing copy or article be delivered up to the copyright owner or to any other person the court directs.

(2) For this purpose a person shall be treated as charged with an offence when he is orally charged or is served with a summons or indictment.

(3) An order may be made by the court of its own motion or on the application of or on behalf of Her Majesty's Procureur, or by the person presenting the case, and may be made whether or not the person is convicted of the offence, but shall not be made -

- (a) after the end of the period specified in section 140 (period after which remedy of delivery up not available), or

- (b) if it appears to the court unlikely that any order will be made under section 141 (order as to disposal of infringing copy or other article).

(4) A person aggrieved by an order made under this section by the court, or by a decision of the court not to make such an order, may appeal against the order or decision as against a conviction or, as the case may be, as against an acquittal by that court of an offence.

(5) 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 140.

(6) Nothing in this section affects any other powers of a court with respect to forfeiture in criminal proceedings.

Search warrants.

136. (1) Where the Bailiff is satisfied by information on oath given by a police officer that there are reasonable grounds for believing -

- (a) that an offence under section 134(1), (2) or (3) or section 208(1) has been or is about to be committed in any premises, and
- (b) that evidence that the offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a police officer to enter and search the premises, using any reasonable force necessary.

(2) A warrant under this section -

- (a) may authorise persons to accompany any police officer executing the warrant, and
- (b) remains in force for 28 days from the date of its issue.

(3) In executing a warrant issued under this section a police officer may seize an article if he reasonably believes that it is evidence that any offence under section 134(1), (2) or (3) or 208(1) has been or is about to be committed.

(4) In this section -

"Bailiff" means -

- (a) where the warrant is to be executed in Alderney, the Chairman of the Court of Alderney or, if he is unavailable, a Jurat thereof,
- (b) where the warrant is to be executed in Sark, the Seneschal or his deputy, and
- (c) in any other case, the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué, and

"premises" includes land, buildings, fixed or movable structures, vehicles, vessels, aircraft and hovercraft.

Offences by body corporate: liability of officers.

137. (1) Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be any attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) A person who aids, abets, counsels, commands or procures the commission of an offence under this Ordinance may be proceeded against and punished as a principal offender.

Importation of infringing copies

Infringing copies may be treated as prohibited goods.

138. (1) The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to Chief Officer of Customs and Excise-

- (a) that he is the owner of the copyright in the work, and
- (b) that he requests the Chief Officer of Customs and Excise, for a period specified in the notice, to treat as prohibited goods printed copies of the work which are infringing copies.

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

subsist.

(3) The owner of the copyright in a sound recording or film may give notice in writing to the Chief Officer of Customs and Excise -

- (a) that he is the owner of the copyright in the work,
- (b) that infringing copies of the work are expected to arrive in the Bailiwick at a time and place specified in the notice, and
- (c) that he requests the Chief Officer of Customs and Excise to treat the copies as prohibited goods.

(4) The Chief Officer of Customs and Excise may treat as prohibited goods any infringing copies of works which arrive in the Bailiwick from outside the EEA or from within the EEA but not having been entered for free circulation.

(5) This section does not apply to goods entered, or expected to be entered, for free circulation, export or re-export or for a suspensive procedure in respect of which an application may be made under article 3(1) of Council Regulation (EC) No. 3295/94 laying down measures to prohibit the release for free circulation, export or re-export or entry for a suspensive procedure of counterfeited or pirated goods (as from time to time amended or re-enacted).

(6) When a notice is in force under this section the importation of goods to which the notice relates, otherwise than by a person for his private and domestic use, is, subject to subsections (4) and (5), prohibited, but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.

Power of Department to make regulations.

139. (1) The Department may make regulations prescribing the form in which notice is to be given under section 138 and requiring a person giving notice -

- (a) to furnish the Chief Officer of Customs and Excise with the evidence specified in the regulations, either on giving notice or when the goods are imported, or at both those times, and
- (b) to comply with any other conditions specified in the regulations.

(2) The regulations may, in particular, require a person giving the notice -

- (a) to pay the fees in respect of the notice specified by the regulations,
- (b) to give security so specified in respect of any liability or expense which the Chief Officer of Customs and Excise may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained,
- (c) to indemnify the Chief Officer of Customs and Excise against that liability or expense, whether security has been given or not.

(3) The regulations may make different provision as respects different classes of case to which they apply and may include such incidental and supplementary provisions as the Department, after consultation with the Chief Officer of Customs and Excise, considers expedient.

Supplementary

Period after which remedy of delivery up not available.

140. (1) An application for an order under section 125 (order for delivery up in civil proceedings) may not be made after the end of the period of six years from the date on which the infringing copy or article in question was made, subject to the following provisions.

(2) If during the whole or part of that period the copyright owner-

(a) is under a disability, or

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

an application may be made at any time before the end of the period of 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

(3) In subsection (2) "**disability**" in relation to any person means that he is a minor or is under a legal disability.

(4) An order under section 135 (order for delivery up in criminal proceedings) shall not in any case be made after the end of the period of six years from the date on which the infringing copy or article in question was made.

Order as to disposal of infringing copy or other article.

141. (1) An application may be made to the magistrate's court for an order that an infringing copy or other article, delivered up in pursuance of an order under section 125 or 135, shall be -

- (a) forfeited to the copyright owner, or
- (b) destroyed or otherwise dealt with as the magistrate's court may think fit,

or for a decision that no such order should be made.

(2) In considering what order should be made, the magistrate's court shall consider whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interest.

(3) The magistrate's court may make such order as it thinks just as to the service of notice on persons having an interest in the copy or other article, 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 appeal.

(4) Where there is more than one person interested in a copy or other article, the magistrate's court shall make the order it thinks just and may direct that the article be sold, or otherwise dealt with, and the proceeds divided.

(5) If the magistrate's court decides that no order should be made under this section, the person in whose possession, custody or control the copy or other article was before being delivered up is entitled to its return.

(6) References in this section to a person having an interest in a copy or other article include any person in whose favour an order could be made in respect of it under this section or under the corresponding section of the Unregistered Design Rights (Bailiwick of Guernsey) Ordinance, 2005 or the Trade Marks (Bailiwick of Guernsey) Ordinance, 2005 (which make similar provision in relation to infringement of rights in designs and trade marks).

(7) For the purposes of this section "**magistrate's court**" means the court which made the order for delivery up under section 125 or 135 or, if that court is no longer seised of the matter -

- (a) where the application is to be made in Alderney, the Court of Alderney,
- (b) where the application is to be made in Sark, the Court of the Seneschal, and
- (c) in any other case, the Magistrate's Court in Guernsey.

Forfeiture of infringing copies.

142. (1) Where there have come into the possession of any person in connection with the investigation or prosecution of a relevant offence -

- (a) infringing copies of a copyright work, or
- (b) articles specifically designed or adapted for making copies of a particular copyright work,

that person may apply under this section for an order for the forfeiture of the infringing copies or articles.

(2) For the purposes of this section "**relevant offence**" means -

- (a) an offence under section 134(1) or (2) (criminal liability for making or dealing with infringing articles), or
- (b) an offence involving dishonesty or deception.

(3) An application under this section may be made -

- (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the infringing copies or articles, to that court, or
- (b) where no application for the forfeiture of the infringing copies or articles has been made under paragraph (a), by way of complaint to the Magistrate's Court in Guernsey, the Court of Alderney or (as the case may require) the Court of the Seneschal of Sark.

(4) On an application under this section, the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles.

(5) A court may infer for the purposes of this section that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(6) Any person aggrieved by an order made under this section by the court, or by a decision of the court not to make such an order, may appeal against the order or decision as against a conviction or, as the case may be, as against an acquittal by that court of an offence.

(7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(8) Subject to subsection (9), where any infringing copies or articles are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.

(9) On making an order under this section the court may direct that the infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate.

PART VII
COPYRIGHT LICENSING

Licensing schemes and licensing bodies

Licensing schemes and licensing bodies.

143. (1) In this Ordinance a "**licensing scheme**" means a scheme setting out -

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

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

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

(3) In this section "**copyright licences**" means licences to do, or authorise the doing of, any of the acts restricted by copyright.

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

covering only -

- (a) a single collective work or collective works of which the authors are the same, or
- (b) works made by, or by employees of, or commissioned by, a single individual, firm, company or group of companies, and for this purpose a group of companies means a holding company and its subsidiaries, within the meaning of -
 - (i) in the Bailiwick apart from Alderney, schedule 8 of the Insurance Business (Bailiwick of Guernsey) Law, 2002^j, and
 - (ii) in Alderney, schedule 4 of the Companies (Alderney) Law, 1994^k.

References and applications with respect to licensing schemes

Licensing schemes to which the following sections apply.

144. Sections 145 to 150 (references and applications in respect of licensing schemes) apply to licensing schemes which are operated by licensing bodies and cover works of more than one author, so far as they relate to licences for-

^j Order in Council No. XXI of 2002.

^k Order in Council No. XXXIV of 1994.

- (a) copying the work,
- (b) rental or lending of copies of the work to the public,
- (c) performing, showing or playing the work in public, or
- (d) broadcasting the work or communicating the work to the public,

and references in those sections to a licensing scheme shall be construed accordingly.

Reference of proposed licensing scheme to Ordinary Court.

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

(2) The Ordinary Court 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 Ordinary Court decides to entertain the reference it shall consider the matter referred and make an order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, that the Ordinary Court determines to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for any period the Ordinary Court determines.

Reference of licensing scheme to Ordinary Court.

146. (1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and -

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

that person or organisation or the operator of the scheme may refer the scheme to the Ordinary Court insofar as it relates to cases of that description.

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

(3) The Ordinary Court shall consider the matter in dispute and make an order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, that the Ordinary Court determines to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for any period the Ordinary Court determines.

Further reference of licensing scheme to Ordinary Court.

147. (1) Where the Ordinary Court has on a previous reference of a licensing scheme under section 145, 146 or 156 or under this section made an order with respect to the scheme, then, while the order remains in force -

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

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

(2) A licensing scheme shall not, except with the special leave of the Ordinary Court, be referred again to the Ordinary Court 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 six months before the expiry of the order.

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

(4) The Ordinary Court shall consider the matter in dispute and make an order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, that the Ordinary

Court determines to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for any period the Ordinary Court determines.

Application for grant of licence in connection with licensing scheme.

148. (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Ordinary Court.

(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 Ordinary Court.

(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 that exception, or

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

(4) If the Ordinary Court 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 the terms the Ordinary Court determines 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 any period the Ordinary Court determines.

Application for review of order as to entitlement to licence.

149. (1) Where the Ordinary Court has made an order under section 148 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Ordinary Court to review its order.

(2) An application shall not be made, except with the special leave of the Ordinary Court -

- (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 six months before the expiry date.

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

Effect of order of Ordinary Court as to licensing scheme.

150. (1) A licensing scheme which has been confirmed or varied by the Ordinary Court -

- (a) under section 145 (reference of terms of proposed scheme), or
- (b) under section 146 or 147 (reference of existing scheme to Ordinary Court),

shall be in force so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

(2) While the order is in force a person who in a case of a class to which the order applies -

- (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and

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- (b) complies with the other terms applicable to the licence under the scheme,

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

(3) The Ordinary Court may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

(4) If 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 subsection (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order,

but no such direction may be made where subsection (5) applies.

(5) An order of the Ordinary Court under section 146 or 147 made with respect to a scheme which is certified for any purpose under section 179 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Ordinary Court.

(6) Where the Ordinary Court has made an order under section

148 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall if he -

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

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

References and applications with respect to licensing by licensing bodies

Licences to which the following sections apply.

151. Sections 152 to 155 (references and application with respect to licensing by licensing bodies) apply to licences which are granted by a licensing body otherwise than in pursuance of a licensing scheme and cover works of more than one author, so far as they authorise -

- (a) copying the work,
- (b) rental or lending of copies of the work to the public,
- (c) performing, showing or playing the work in public, or
- (d) communicating the work to the public,

and references in those sections to a licence shall be construed accordingly.

Reference to Ordinary Court of terms of proposed licences.

152. (1) The terms on which a licensing body proposes to grant a licence may be referred to the Ordinary Court by the prospective licensee.

(2) The Ordinary Court 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 Ordinary Court decides to entertain the reference it shall consider the terms of the proposed licence and make an order, whether confirming or varying the terms, as it determines to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for any period the Ordinary Court determines.

Reference to Ordinary Court of terms of expiring licence.

153. (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 Ordinary Court on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) The application may not be made until the last six months before the licence is due to expire.

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

(4) If the Ordinary Court 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 the terms the Ordinary Court determines to be reasonable in the circumstances.

(5) An order of the Ordinary Court under this section may be made so as to be in force indefinitely or for any period the Ordinary Court determines.

Application for review of order as to licence.

154. (1) Where the Ordinary Court has made an order under section 152, 153 or 155, the licensing body or the person entitled to the benefit of the order may apply to the Ordinary Court to review its order.

(2) An application shall not be made, except with the special leave of the Ordinary Court -

- (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 that decision, until the last six months before the expiry date.

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

Effect of order of Ordinary Court as to licence.

155. (1) Where the Ordinary Court has made an order under section 152 or 153 and the order remains in force, the person entitled to the benefit of the order shall if he -

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

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

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

- (a) in the case of an order under section 152, if assignment is not prohibited under the terms of the Ordinary Court's order, and
- (b) in the case of an order under section 153, if assignment was not prohibited under the terms of the original licence.

(3) The Ordinary Court may direct that an order under section 152 or 153, or an order under section 154 varying that order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

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

Notification of licence or licensing scheme for excepted sound recordings.

156. (1) This section only applies to a proposed licence or licensing scheme that will authorise the playing in public of excepted sound recordings included in broadcasts, in circumstances where by reason of the exclusion of excepted sound recordings from section 93(1), the playing in public of such recordings would otherwise infringe the copyright in them.

(2) A licensing body must notify the Department of the details of any proposed licence or licensing scheme for excepted sound recordings before it comes into operation.

(3) A licence or licensing scheme, which has been notified under subsection (2), may not be operated by the licensing body until 28 days have elapsed since that notification.

(4) Subject to subsection (5), the Department shall take into account the matters set out in subsection (6) and then either -

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- (a) refer the licence or licensing scheme to the Ordinary Court for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or
- (b) notify the licensing body that it does not intend to refer the licence or licensing scheme to the Ordinary Court.

(5) If the Department becomes aware -

- (a) that a licensing body has failed to notify it of a licence or licensing scheme under subsection (2) before it comes into operation, or
- (b) that a licence or licensing scheme has been operated within 28 days of a notification under subsection (2),

subsection (4) does not apply, but the Department may at any time refer the licence or licensing scheme to the Ordinary Court for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or may notify the licensing body that it does not intend to refer it to the Ordinary Court.

(6) The matters referred to in subsection (4) are -

- (a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in subsection (7),
- (b) any written representations received by the Department,

- (c) previous determinations of the Ordinary Court,
 - (d) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and the terms of those schemes or licences, and
 - (e) the extent to which the licensing body has consulted any person who would be affected by the proposed licence or licensing scheme, or organisations representing such persons, and the steps, if any, it has taken as a result.
- (7) The factors referred to in subsection (6) are -
- (a) the extent to which the broadcasts to be shown or played by a potential licensee in circumstances mentioned in subsection (1) are likely to include excepted sound recordings,
 - (b) the size and the nature of the audience that a licence or licensing scheme would permit to hear the excepted sound recordings,
 - (c) what commercial benefit a potential licensee is likely to obtain from playing the excepted sound recordings, and
 - (d) the extent to which the owners of copyright in the excepted sound recordings will receive equitable

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remuneration, from sources other than the proposed licence or licensing scheme, for the inclusion of their recordings in the broadcasts to be shown or played in public by a potential licensee.

(8) A proposed licence or licensing scheme that must be notified to the Department under subsection (2) may only be referred to the Ordinary Court under section 145 or 152 before such notification takes place.

(9) A proposed licensing scheme that has been notified to the Department under subsection (2) may only be referred to the Ordinary Court under section 146 after the Department has notified the licensing body that it does not intend to refer the licensing scheme to the Ordinary Court.

(10) If a reference made to the Ordinary Court under section 145 or 152 is permitted under subsection (8) then -

- (a) the reference shall not be considered premature only because the licence or licensing scheme has not been notified to the Department under subsection (2), and
- (b) where the Ordinary Court decides to entertain the reference, subsections (2) to (5) shall not apply.

(11) Nothing in this section shall be taken to prejudice any right to make a reference or application to the Ordinary Court under sections 147 to 149, 153 or 154.

(12) This section applies to modifications to an existing licence or licensing scheme as it applies to a proposed licence or licensing scheme.

(13) In this section and in section 157, any reference to a "licence" means a licence granted by a licensing body otherwise than in pursuance of a licensing scheme and which covers works of more than one author.

References to the Ordinary Court by the Department under section 156.

157. (1) The Ordinary Court may make appropriate enquiries to establish whether a licence or licensing scheme referred to it by the Department under section 156(4)(a) or (5) is reasonable in the circumstances.

(2) When considering the matter referred, and after concluding any such enquiries, the Ordinary Court shall take into account -

- (a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in section 156(7), and
- (b) any other factors it considers relevant,

and shall then make an order under subsection (3).

(3) The Ordinary Court shall make such order -

- (a) in the case of a licensing scheme, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of any description, or
- (b) in the case of a licence, either confirming or varying the proposed licence, as the Ordinary Court may determine to be reasonable in the circumstances.

(4) The Ordinary Court may direct that the order, so far as it reduces the amount of charges payable, has effect from a date before that on which it is made.

If such a direction is made, any necessary repayments to a licensee shall be made in respect of charges already paid.

(5) The Ordinary Court may award simple interest on repayments, at such rate and for such period, ending not later than the date of the order, as it thinks fit.

Factors to be taken into account in certain classes of case

General considerations: unreasonable discrimination.

158. In determining what is reasonable on a reference or application under this Part relating to a licensing scheme or licence, the Ordinary Court shall have regard to -

- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and
- (b) terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by or other licences granted by the same person.

Licences for reprographic copying.

159. Where a reference or application is made to the Ordinary Court under this Part relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, the Ordinary Court shall have regard to -

- (a) the extent to which published editions of the work in question are otherwise available,
- (b) the proportion of the work to be copied, and
- (c) the nature of the use to which the copies are likely to be put.

Licences for educational establishments in respect of works included in broadcasts.

160. (1) This section applies to references or applications under this Part relating to licences for the recording by or on behalf of educational establishments of broadcasts which include copyright works, or the making of copies of those recordings, for educational purposes.

(2) The Ordinary Court shall, in considering what charges should be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast have already received, or are entitled to receive, payment in respect of their inclusion.

Licences to reflect conditions imposed by promoters of events.

161. (1) This section applies to references or applications under this Part in respect of licences relating to sound recordings, films, or broadcasts which include, or are to include, any entertainment or other event.

(2) The Ordinary Court shall have regard to any conditions imposed by the promoters of the entertainment or other event and, in particular, the Ordinary Court shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

(3) Nothing in this section shall require the Ordinary Court to have regard to any of those conditions in so far as they -

- (a) purport to regulate the charges to be imposed in respect of the grant of licences, or
- (b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film or broadcast.

Licences to reflect payments in respect of underlying rights.

162. (1) In considering what charges should be paid for a licence -

- (a) on a reference or application under this Part relating to licences for the rental or lending of copies of a work, or
- (b) on an application under section 178 (royalty or other sum payable for lending of certain works),

the Ordinary Court shall take into account any reasonable payments which the owner of the copyright in the work is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, to owners of copyright in works included in that work.

(2) On any reference or application under this Part relating to licensing in respect of the copyright in sound recordings, films or broadcasts, the Ordinary Court shall take into account, in considering what charges should be paid for a licence, any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance included in the recording, film or broadcast.

Licences in respect of works included in re-transmissions.

163. (1) This section applies, subject to subsection (4), to references or applications under this Part relating to licences to include in a broadcast -

- (a) literary, dramatic, musical or artistic works, or
- (b) sound recordings of films,

where one broadcast ("the first transmission") is, by reception and immediate re-transmission, to be further broadcast ("the further transmission").

(2) So far as the further transmission is to the same area as the first transmission, the Ordinary Court shall, in considering what charges should be paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission which adequately remunerates him in respect of transmissions to that area.

(3) So far as the further transmission is to an area outside that to which the first transmission was made, the Ordinary Court shall leave the further transmission out of the account in considering what charges (if any) should be paid for licences for the first transmission.

(4) This section does not apply in relation to any application under section 95 (royalty or other sum payable in pursuance of section 94(4))

Mention of specific matters not to exclude other relevant considerations.

164. The mention in sections 158 to 163 of specific matters to which the Ordinary Court is to have regard in certain classes of case does not affect the Ordinary Court's general obligation in any case to have regard to all relevant considerations.

Circumstances in which right available.

165. (1) Section 167 applies to the inclusion in a broadcast of any sound recordings if -

- (a) a licence to include those recordings in the broadcast could be granted by a licensing body or that body could procure the grant of a licence to do so,
- (b) the condition in subsection (2) or (3) applies, and
- (c) the person including those recordings in the broadcast has complied with section 166.

(2) Where the person including the recording in the broadcast does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, that licence, being a licence -

- (a) whose terms as to payment for including the recordings in the broadcast would be acceptable to him or comply with an order of the Ordinary Court under

section 168 relating to that licence or any scheme under which it would be granted, and

(b) allowing unlimited needletime or the needletime that he has demanded.

(3) Where he holds a licence to include the recordings in the broadcast, the condition is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or the needletime that he has demanded, or refuses to do so on terms that fall within subsection (2)(a).

(4) The references in subsection (2) to refusing to grant, or procure the grant of, a licence, and in subsection (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.

(5) In the group of sections from this section to section 171 -

"broadcast" does not include any broadcast which is a transmission of the kind specified in section 7(2)(b) or (c),

"needletime" means the time in any period (whether determined as a number of hours in the period or a proportion of the period, or otherwise) in which any recordings may be included in a broadcast,

"sound recording" does not include a film sound track when accompanying a film.

(6) In sections 166 to 171, **"terms of payment"** means terms as to

payment for including sound recordings in a broadcast.

Notice of intention to exercise right.

166. (1) A person intending to avail himself of the right conferred by section 167 must -

- (a) give notice to the licensing body of his intention to exercise the right, asking the body to propose terms of payment, and
- (b) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.

(2) Where he has a licence to include the recording in a broadcast, the date specified in a notice under subsection (1)(b) shall not be sooner than the date of expiry of that licence except in a case falling within section 165(3).

(3) Before the person intending to avail himself of the right begins to exercise it, he shall-

- (a) give reasonable notice to the Ordinary Court of his intention to exercise the right, and of the date on which he proposes to begin to do so, and
- (b) apply to the Ordinary Court under section 168 to settle the terms of payment.

Conditions for exercise of right.

167. (1) A person who, on or after the date specified in a notice under section 166(1)(b), includes in a broadcast any sound recordings in circumstances in which this section applies, and who -

- (a) complies with any reasonable condition, notice of which has been given to him by the licensing body, as to the broadcasting of those recordings,
- (b) provides that body with any information about their inclusion in the broadcast as it may reasonably require, and
- (c) makes the payments to the licensing body that are required by this section,

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

(2) Payments shall be made at not less than quarterly intervals in arrears.

(3) The amount of any payment is that determined in accordance with any order of the Ordinary Court under section 168 or, if no order has been made -

- (a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under section 166, or

- (b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under section 166(1)(b).

(4) Where this section applies to the inclusion in a broadcast of any sound recordings, it does so in place of any licence.

Applications to settle payments.

168. (1) On an application to settle the terms of payment, the Ordinary Court shall consider the matter and make any order it determines to be reasonable in the circumstances.

(2) An order under subsection (1) has effect from the date the applicant begins to exercise the right conferred by section 167 and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

References etc, about conditions, information and other terms.

169. (1) A person exercising the right conferred by section 167, or who has given notice to the Ordinary Court of his intention to do so, may refer to the Ordinary Court -

- (a) any question whether any condition as to the inclusion in a broadcast of sound recordings, notice of which has been given to him by the licensing body in question, is a reasonable condition, or

- (b) any question whether any information is information which the licensing body can reasonably require him to provide.

(2) On a reference under this section, the Ordinary Court shall consider the matter and make any order it determines to be reasonable in the circumstances.

Application for review of order.

170. (1) A person exercising the right conferred by section 167 or the licensing body may apply to the Ordinary Court to review any order under section 168 or 169.

(2) An application shall not be made, except with the special leave of the Ordinary Court -

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

(3) On the application the Ordinary Court shall consider the matter and make any order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An order under this section has effect from the date on which it is made or any later date specified by the Ordinary Court.

Factors to be taken into account.

171. (1) In determining what is reasonable on an application or reference under section 168 or 169, or on reviewing any order under section 170, the Ordinary Court shall -

- (a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by section 167, and
- (b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.

(2) In setting the terms of payment under section 168, the Ordinary Court shall not be guided by any order it has made under any enactment other than that section.

(3) Section 163 (factors to be taken into account: retransmissions) applies on an application or reference under sections 168 to 170 as it applies on an application or reference relating to a licence.

Power to amend sections 165 to 171.

172. The Department may by regulations, subject to any transitional provision as appears to it to be appropriate, amend sections 165 to 171 so as -

- (a) to include in any reference to sound recordings any works of a description specified in the regulations, or

- (b) to exclude from any reference to a broadcast any broadcast of a description so specified.

Implied indemnity in schemes or licences for reprographic copying

Implied indemnity in certain schemes and licences for reprographic copying.

173. (1) This section applies to -

- (a) schemes for licensing reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, and
- (b) licences granted by licensing bodies for that copying,

where the scheme or licence does not specify the works to which it applies with sufficient particularity to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.

(2) There is implied -

- (a) in every scheme to which this section applies an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme, and
- (b) in every licence to which this section applies an undertaking by the licensing body to indemnify the licensee,

against any liability incurred by him by reason of his having infringed copyright by making or authorising the making of reprographic copies of a work in circumstances within the apparent scope of his licence.

(3) The circumstances of a case are within the apparent scope of a licence if -

- (a) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies, and
- (b) the licence does not expressly provide that it does not extend to copyright of the description infringed.

(4) In this section "**liability**" includes liability to pay costs, and this section applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against him for infringement of copyright as it applies to sums which he is liable to pay in respect of that infringement.

(5) A scheme or licence to which this section applies may contain reasonable provision -

- (a) with respect to the manner in which, and time within which, claims under the undertaking implied by this section are to be made,
- (b) enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of

any proceedings affecting the amount of his liability to indemnify.

Reprographic copying by educational establishments

Power to extend coverage of scheme or licence.

174. (1) This section applies to -

- (a) a licensing scheme to which sections 145 to 150 apply (see section 144) and which is operated by a licensing body, or
- (b) a licence to which sections 152 to 155 apply (see section 151),

so far as it provides for the grant of licences, or is a licence, authorising the making by or on behalf of educational establishments for the purpose of instruction of reprographic copies of published literary, dramatic, musical or artistic works, or of the typographical arrangement of published editions.

(2) If it appears to the Department with respect to a scheme or licence to which this section applies that -

- (a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it, and
- (b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of

the copyright owners,

it may by regulations provide that the scheme or licence shall extend to those works.

(3) Where it proposes to make regulations under subsection (2), the Department shall give notice of the proposal to -

- (a) the copyright owners,
- (b) the licensing body in question, and
- (c) any persons or organisations representative of educational establishments, and any other persons or organisations, the Department thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Department about the proposal within six months from the date of the notice, and if any of them wishes to make oral representations, the Department shall appoint a person to hear the representations and report to it.

(5) In considering whether to make regulations the Department shall take into account any representations made to it in accordance with subsection (4) and any other matters that appear to it to be relevant.

Variation or discharge of order extending scheme or licence.

175. (1) The owner of the copyright in a work in respect of which regulations are in force under section 174 may apply to the Department for a variation or revocation of the regulations, stating his reasons for making the

application.

(2) The Department shall not entertain an application made within two years of the making of the original regulations, or of the making of regulations on a previous application under this section, unless it appears to it that the circumstances are exceptional.

(3) On considering the reasons for the application the Department may confirm the regulations forthwith and, if it does not do so, it shall cause notice of the application to be given to -

(a) the licensing body in question, and

(b) any persons or organisations representative of educational establishments, and any other persons or organisations, that it thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Department about the application within the period of two months from the date of the notice, and if any of them wishes to make oral representations the Department shall appoint a person to hear the representations and report to it.

(5) In considering the application the Department shall take into account the reasons for the application, any representations made to it in accordance with subsection (4) and any other matters that appear to it to be relevant.

(6) The Department may make any regulations it thinks fit confirming or revoking the regulations (or, as the case may be, the regulations as previously varied), or varying (or further varying) them so as to exclude works

from them.

Inquiry whether new scheme or general licence required.

176. (1) The Department may appoint a person to inquire into the question whether new provision is required (whether by way of a licensing scheme or general licence) to authorise the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of -

- (a) published literary, dramatic, musical or artistic works,
or
- (b) the typographical arrangement of published editions,

of a description which appears to the Department not to be covered by an existing licensing scheme or general licence and not to fall within the power conferred by section 174 (power to extend existing schemes and licences to similar works).

(2) The procedure to be followed in relation to an inquiry shall be that which is prescribed by regulations made by the Department.

(3) The regulations shall, in particular, provide for notice to be given to -

- (a) persons or organisations appearing to the Department to represent the owners of copyright in works of that description, and
- (b) persons or organisations appearing to the Department to represent educational establishments,

and for the making of written or oral representations by those persons, but without prejudice to the giving of notice to, and the making of representations by, other persons and organisations.

(4) The person appointed to hold the inquiry shall not recommend the making of new provision unless he is satisfied -

(a) that it would be of advantage to educational establishments to be authorised to make reprographic copies of the works in question, and

(b) that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners.

(5) If he does recommend the making of new provision he shall specify any terms, other than terms as to charges payable, on which authorisation under the new provision should be available.

(6) In this section and section 177 a "**general licence**" means a licence granted by a licensing body which covers all works of the description to which it applies.

Statutory licence where recommendation not implemented.

177. (1) The Department may, within one year of the making of a recommendation under section 176, by regulations provide that if, or to the extent that, provision has not been made in accordance with the recommendation, the making by or on behalf of an educational establishment, for the purposes of instruction, of reprographic copies of the works to which the recommendation

relates shall be treated as licensed by the owners of the copyright in the works.

(2) For that purpose provision shall be regarded as having been made in accordance with the recommendation if -

(a) a certified licensing scheme has been established under which a licence is available to the establishment in question, or

(b) a general licence has been -

(i) granted to or for the benefit of the establishment, or

(ii) referred by or on behalf of that establishment to the Ordinary Court under section 152 (reference of terms of proposed licence), or

(iii) offered to or for the benefit of that establishment and refused without such a reference,

and the terms of the scheme or licence accord with the recommendation.

(3) The regulations shall provide that any existing licence authorising the making of those copies (not being a licence granted under a certified licensing scheme or a general licence) shall cease to have effect to the extent that it is more restricted or more onerous than the licence provided for by the regulations.

(4) The regulations shall provide for the licence to be free of

royalty but, as respects other matters, subject to any terms specified in the recommendation and to any other terms as the Department may think fit.

(5) The regulations may provide that where a copy which would otherwise be an infringing copy is made in accordance with the licence provided by the regulations but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that transaction, and if that transaction infringes copyright, for all subsequent purposes.

In this subsection "**dealt with**" means sold or let for hire, offered or exposed for sale or hire, or exhibited in public.

(6) The regulations shall not come into force until at least six months after they are made.

(7) Regulations may be varied from time to time, but not so as to include works other than those to which the recommendation relates or remove any terms specified in the recommendation, and may be revoked.

(8) In this section a "**certified licensing scheme**" means a licensing scheme certified for the purposes of this section under section 179.

Royalty or other sum payable for lending of certain works

Royalty or other sum payable for lending of certain works.

178. (1) An application to settle the royalty or other sum payable in pursuance of section 86 (lending of copies of certain copyright works) may be made to the Ordinary Court by the copyright owner or the person claiming to be treated as licensed by him.

(2) The Ordinary Court shall consider the matter and make an order it determines to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Ordinary Court to vary the order, and the Ordinary Court shall consider the matter and make an order confirming or varying the original order it determines to be reasonable in the circumstances.

(4) An application under subsection (3) shall not, except with the special leave of the Ordinary Court, 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 Ordinary Court.

Certification of licensing schemes

Certification of licensing schemes.

179. (1) A person operating or proposing to operate a licensing scheme may apply to the Department to certify the scheme for the purposes of -

- (a) section 47 (educational recording of broadcasts),
- (b) section 80 (abstracts of scientific or technical articles),
- (c) section 86 (lending to public of copies of certain works),
- (d) section 96 (sub-titled copies of broadcasts for people who are deaf or hard of hearing), or

- (e) section 177 (reprographic copying of published works by educational establishments).

(2) The Department shall certify the scheme by regulations if it is satisfied that it -

- (a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences, and
- (b) sets out clearly the charges payable and the other terms on which licences will be granted.

(3) The scheme shall be scheduled to the regulations and the certification shall come into operation for the purposes of sections 47, 80, 86, 96 or 177, as the case may be -

- (a) on a date, not less than eight weeks after the regulations are made, as may be specified in the regulations, or
- (b) if the scheme is the subject of a reference under section 145 (reference of proposed scheme), any later date on which the order of the Ordinary Court under that section comes into force or the reference is withdrawn.

(4) A variation of the scheme is not effective unless a corresponding amendment of the regulations is made, and the Department shall

make that amendment in the case of a variation ordered by the Ordinary Court on a reference under sections 145, 146 or 147, and may do so in any other case if it thinks fit.

(5) The regulations shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Department that it is no longer being operated according to its terms.

Collective exercise of certain rights in relation to cable re-transmission.

180. (1) This section applies to the right of the owner of copyright in a literary, dramatic, musical or artistic work, sound recording or film to grant or refuse authorisation for cable re-transmission of a wireless broadcast from an EEA State in which the work is included.

That right is referred to below as "**cable re-transmission right**".

(2) The cable re-transmission right may be exercised against a cable operator only through a licensing body.

(3) Where a copyright owner has not transferred management of his cable re-transmission right to a licensing body, the licensing body which manages rights of the same category shall be deemed to be mandated to manage his right.

Where more than one licensing body manages rights of that category, he may choose which of them is deemed to be mandated to manage his right.

(4) A copyright owner to whom subsection (3) applies has the same rights and obligations resulting from any relevant agreement between the cable operator and the licensing body as have copyright owners who have transferred

management of their cable re-transmission right to that licensing body.

(5) Any rights to which a copyright owner may be entitled by virtue of subsection (4) shall be claimed within the period of three years beginning with the date of the cable re-transmission concerned.

(6) This section does not affect any rights exercisable by the maker of the broadcast, whether in relation to the broadcast or a work included in it.

(7) In this section -

"**cable operator**" means a person responsible for cable re-transmission of a wireless broadcast, and

"**cable re-transmission**" means the reception and immediate re-transmission by cable, including the transmission of microwave energy between terrestrial fixed points, of a wireless broadcast.

PART VIII

QUALIFICATION FOR AND EXTENT OF COPYRIGHT PROTECTION

Qualification for copyright protection

Qualification for copyright protection.

181. (1) Copyright does not subsist in a work unless the qualification requirements of this Part are satisfied as regards -

(a) the author (see section 182), or

- (b) the country in which the work was first published (see section 183), or
- (c) in the case of a broadcast, the country from which the broadcast was made (see section 184).

(2) Subsection (1) does not apply in relation to Crown copyright or States copyright (section 189 to 192) or to copyright subsisting by virtue of section 194 (copyright of certain international organisations).

(3) If the qualification requirements of this Part or section 189, 191 or 194 (Crown copyright, States copyright and copyright of certain international organisations) are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

Qualification by reference to author.

182. (1) A work qualifies for copyright protection if the author was at the material time -

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject or a British protected person within the meaning of the British Nationality Act 1981 (an Act of Parliament),
- (b) an individual domiciled or resident in the Bailiwick, or another country to which the relevant provisions of this Ordinance extend, or
- (c) a body incorporated under the law of the Bailiwick or

of another country to which the relevant provisions of this Ordinance extend.

(2) Where, or so far as, provision is made by regulations under section 185 (application of this Ordinance in relation to other countries), a work also qualifies for copyright protection if at the material time the author was a citizen or subject of, an individual domiciled or resident in, or a body incorporated under the law of, a country to which the regulations relate.

(3) A work of joint authorship qualifies for copyright protection if at the material time any of the authors satisfies the requirements of subsection (1) or (2), but where a work qualifies for copyright protection only under this section, only those authors who satisfy those requirements shall be taken into account for the purposes of -

- (a) section 12(1) and (2) (first ownership of copyright, entitlement of author or author's employer),
- (b) section 13 (duration of copyright), and section 10(4) (meaning of "unknown authorship") so far as it applies for the purposes of section 13, and
- (c) section 77 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author).

(4) The material time in relation to a literary, dramatic, musical or artistic work is -

- (a) in the case of an unpublished work, when the work

was made or, if the making of the work extended over a period, a substantial part of that period,

(b) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his death.

(5) The material time in relation to other descriptions of work is -

(a) in the case of a sound recording or film, when it was made,

(b) in the case of a broadcast, when the broadcast was made,

(c) in the case of the typographical arrangement of a published edition, when the edition was first published.

Qualification by reference to country of first publication.

183. (1) A literary, dramatic, musical or artistic work, a sound recording or film, or the typographical arrangement of a published edition, qualifies for copyright protection if it is first published in the Bailiwick.

(2) Where, or so far as, provision is made by regulations under section 185 (application of this Ordinance in relation to other countries), that work also qualifies for copyright protection if it is first published in a country to which the regulations relate.

(3) For the purposes of this section, publication in one country

shall not be regarded as other than the first publication by reason of simultaneous publication elsewhere, and for this purpose publication elsewhere within the previous thirty days shall be treated as simultaneous.

Qualification by reference to place of transmission.

184. (1) A broadcast qualifies for copyright protection if it is made from a place in the Bailiwick.

(2) Where, or so far as, provision is made by regulations under section 185 (application of this Ordinance in relation to other countries), a broadcast also qualifies for copyright protection if it is made from a place in a country to which the regulations relates.

Application of this Ordinance

Application of this Ordinance in relation to other countries.

185. (1) The Department may by regulations make provision for applying in relation to a country outside the Bailiwick any of the provisions of this Ordinance specified in the regulations, so as to ensure that those provisions -

- (a) apply in relation to persons who are citizens or subjects of that country or are domiciled or resident there, as they apply to persons who are British citizens or are domiciled or resident in the Bailiwick,
- (b) apply in relation to bodies incorporated under the law of that country as they apply in relation to bodies incorporated under the law of the Bailiwick,
- (c) apply in respect of works first published in that

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country as they apply in relation to works first published in the Bailiwick,

- (d) apply in relation to broadcasts made from that country as they apply in relation to broadcasts made from the Bailiwick, or
- (e) apply in relation to the Crown in right of, or the government of, that country as they apply in relation to the Crown in right of the Bailiwick or (as the case may be) to the States.

(2) Regulations may make provision for all or any of the matters referred to in subsection (1) and may -

- (a) apply any provisions of this Ordinance subject to the exceptions and modifications specified in the regulations, and
- (b) direct that any provisions of this Ordinance apply either generally or in relation to the classes of works, or other classes of case, that are specified in the regulations.

(3) Except in the case of the United Kingdom, another Convention country or another member State of the European Economic Community, the Department shall not make regulations under this section in relation to a country unless satisfied that provision has been or will be made under the law of that country, in respect of the class of works to which the regulations relate, giving adequate protection to the owners of copyright under this Ordinance.

(4) In subsection (3) "**Convention country**" means a country which is a party to a Convention relating to copyright which extends to the Bailiwick.

Denial of copyright protection to citizens of other countries not giving adequate protection to Bailiwick works.

186. (1) If it appears to the Department that the law of a country fails to give adequate protection to Bailiwick works to which this section applies, or to one or more classes of those works, the Department may make provision by regulations in accordance with this section restricting the rights conferred by this Ordinance in relation to works of authors connected with that country.

(2) Regulations under this section shall designate the country concerned and provide that, for the purposes specified in the regulations, works first published after a date specified in the regulations shall not be treated as qualifying for copyright protection by virtue of that publication if at that time the authors are -

- (a) citizens or subjects of that country not domiciled or resident in the Bailiwick, or
- (b) bodies incorporated under the law of that country,

and the regulations may make provision for all the purposes of this Ordinance or for the purposes specified in the regulations, and either generally or in relation to the class of cases specified in the regulations, having regard to the nature and extent of the failure referred to in subsection (1).

(3) This section applies to literary, dramatic, musical and artistic

works, sound recordings and films, and "Bailiwick works" means works of which the author was a qualifying person at the material time within the meaning of section 182.

Supplementary

Territorial waters.

187. For the purpose of this Ordinance the territorial waters of the Bailiwick shall be treated as part of the Bailiwick.

Guernsey ships.

188 (1) This Ordinance applies to things done on a Guernsey ship as it applies to things done in the Bailiwick.

(2) In this section "**Guernsey ship**" means a ship registered in Guernsey under the Merchant Shipping Act 1894 (an Act of Parliament).

PART IX

MISCELLANEOUS AND GENERAL

Crown and States copyright

Crown copyright.

189. (1) Where a work is made by Her Majesty or by an officer or servant of the Crown in the course of his duties -

- (a) the work qualifies for copyright protection notwithstanding section 181(1) (ordinary requirement as to qualification for copyright protection), and

- (b) Her Majesty is the first owner of any copyright in the work,

and for the purposes of this section works made by Her Majesty include any sound recording, film or live broadcast of the proceedings of the National Assembly for Wales (including proceedings of a committee of the Assembly or of a subcommittee of such a committee) which is made by or under the direction or control of the Assembly, but a work shall not be regarded as made by or under the direction or control of the Assembly by reason only of its being commissioned by or on behalf of the Assembly.

(2) Copyright in that work is referred to in this Ordinance as "**Crown copyright**", notwithstanding that it may be, or have been, assigned to another person.

(3) Crown copyright in a literary, dramatic, musical or artistic work continues to subsist -

- (a) until the end of the period of 125 years from the end of the calendar year in which the work was made, or
- (b) if the work is published commercially before the end of the period of 75 years from the end of the calendar year in which it was made, until the end of the period of 50 years from the end of the calendar year in which it was first so published.

(4) In the case of a work of joint authorship where one or more but not all of the authors are persons falling with subsection (1) this section applies only in relation to those authors and the copyright subsisting by virtue of their

contribution to the work.

(5) Crown copyright to which Her Majesty is entitled vests in Her Majesty's Receiver-General in trust for Her Majesty for the public service of the Bailiwick.

(6) Except as mentioned above, and subject to any express exclusion elsewhere in this Ordinance, the provisions of this Ordinance apply in relation to Crown copyright as to other copyright.

(7) This section does not apply to a work if, or to the extent that, States copyright subsists in the work (see sections 191 and 192).

Copyright in Acts and Measures.

190. (1) Her Majesty is entitled to copyright in every Act of Parliament, Act of the Scottish Parliament, Act of the Northern Ireland Assembly, Order in Council or Measure of the General Synod of the Church of England.

(2) The copyright subsists from Royal Assent until the end of the period of 50 years from the end of the calendar year in which Royal Assent was given.

(3) References in this Ordinance to Crown copyright (except in section 189) include copyright under this section and, except as mentioned above, the provisions of this Ordinance apply in relation to copyright under this section as to other Crown copyright.

(4) Copyright under this section vests in Her Majesty's Receiver-General in trust for Her Majesty for the public service of the Bailiwick.

(5) No other copyright, or right in the nature of copyright, subsists in such an Act, Order in Council or Measure.

States copyright.

191. (1) Where a work is made by or under the direction or control of the States or any department, committee or other similar body, however called or styled, of the States -

- (a) the work qualifies for copyright protection notwithstanding section 181(1) (ordinary requirement as to qualification for copyright protection), and
- (b) the first owner of any copyright in the work is the States.

(2) Copyright in that work is referred to in this Ordinance as "**States copyright**", notwithstanding that it may be, or have been, assigned to another person.

(3) States copyright in a literary, dramatic, musical or artistic work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made.

(4) For the purposes of this section, works made by or under the direction or control of the States or any department, committee or other similar body of the States include -

- (a) any work made by or under the direction or control of an officer or employee of any of those bodies in the course of his duties, and

- (b) any sound recording, film, live broadcast or live cable programme of States proceedings,

but a work shall not be regarded as made by or under the direction or control of any of those bodies by reason only of its being commissioned by or on behalf of that body.

(5) In the case of a work of joint authorship where one or more but not all of the authors are acting on behalf of, or under the direction or control of, the States or any department, committee or other similar body of the States, this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

(6) Except as mentioned above, and subject to any express exclusion elsewhere in this Ordinance, the provisions of this Ordinance apply in relation to States copyright as to other copyright.

(7) The provisions of this section apply, subject to any exceptions or modifications specified by regulations made by the Department, to works made by or under the direction or control of any other governmental or legislative body of any country outside the Bailiwick specified in the regulations, and references in this Ordinance to "States copyright" shall be construed accordingly.

(8) In this section the "**States**" means the States of Guernsey, the States of Alderney or (as the case may require) the Chief Pleas of Sark.

Copyright in Projets de Loi and Ordinances.

192. (1) Copyright in every Projet de Loi and Ordinance passed by the States of Deliberation belongs to the States of Guernsey.

(2) Copyright in every Projet de Loi and Ordinance passed by the States of Alderney (but not by the States of Deliberation) belongs to the States of Alderney.

(3) Copyright in every Projet de Loi and Ordinance passed by the Chief Pleas of Sark (but not by the States of Deliberation) belongs to the Chief Pleas of Sark.

(4) Copyright under this section in a Projet de Loi or Ordinance subsists for a period of 50 years from the date on which the Projet de Loi or Ordinance was passed as mentioned in subsection (1), (2) or (3), as the case may be.

(5) References in this Ordinance to States copyright, except in section 191, include copyright under this section and, except as mentioned above, the provisions of this Ordinance apply in relation to copyright under this section as to other States copyright.

(6) No other copyright, or right in the nature of copyright, subsists in a Projet de Loi or Ordinance passed as mentioned in subsection (1), (2) or (3) after copyright has once subsisted under this section.

Supplementary provisions with respect to States copyright.

193. (1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, the States and any department, committee or other similar body, however called or styled, of the States shall each be treated as having the legal capacities of a body corporate.

(2) Legal proceedings relating to copyright shall be brought by or against the States or any department, committee or other similar body of the States in the name of that body.

(3) In this section the "States" means the States of Guernsey, the States of Alderney or (as the case may require) the Chief Pleas of Sark.

Other miscellaneous provisions

Copyright vesting in certain international organisations.

194. (1) Where an original literary, dramatic, musical or artistic work-
- (a) is made by an officer or employee of, or is published by, an international organisation to which this section applies, and
 - (b) does not qualify for copyright protection under section 182 (qualification by reference to author) or section 183 (qualification by reference to country of first publication),

copyright nevertheless subsists in the work by virtue of this section and the organisation is first owner of that copyright.

(2) The international organisations to which this section applies are those as to which the Department has by regulations declared that it is expedient that this section should apply.

(3) Copyright of which an international organisation is first owner by virtue of this section continues to subsist until the end of the period of 50

years from the end of the calendar year in which the work was made or any longer period specified by the Department by regulations for the purpose of complying with the international obligations of the United Kingdom which extend to the Bailiwick.

(4) An international organisation to which this section applies shall be deemed to have, and to have had at all material times, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright and in connection with all legal proceedings relating to copyright.

Folklore, etc: anonymous unpublished works.

195. (1) Where in the case of an unpublished literary, dramatic, musical or artistic work of unknown authorship there is evidence that the author (or in the case of a joint work, any of the authors) was a qualifying individual by connection with a country outside the Bailiwick, it shall be presumed until the contrary is proved that he was a qualifying individual and that copyright accordingly subsists in the work, subject to the provisions of this Ordinance.

(2) If under the law of that country a body is appointed to protect and enforce copyright in those works, the Department may by regulations designate that body for the purposes of this section.

(3) A body so designated shall be recognised in the Bailiwick as having authority to do in place of the copyright owner anything, other than assign copyright, which it is empowered to do under the law of that country, and it may, in particular, bring proceedings in its own name.

(4) In subsection (1) a "**qualifying individual**" means an individual who at the material time (within the meaning of section 182) was a person whose works qualified under that section for copyright protection.

(5) This section does not apply if there has been an assignment of copyright in the work by the author of which notice has been given to the designated body, and nothing in this section affects the validity of an assignment of copyright made, or licence granted, by the author or a person lawfully claiming under him.

Publication right.

196. (1) A person who after the expiry of copyright protection publishes for the first time a previously unpublished work has, in accordance with the following provisions, a property right ("**publication right**") equivalent to copyright.

(2) For this purpose publication includes making available to the public, in particular -

- (a) the issue of copies to the public,
- (b) making the work available by means of an electronic retrieval system,
- (c) the rental or lending of copies of the work to the public,
- (d) the performance, exhibition or showing of the work in public, or
- (e) communicating the work to the public.

(3) No account shall be taken for this purpose of any unauthorised act.

In relation to a time when there is no copyright in the work, an unauthorised act means an act done without the consent of the owner of the physical medium in which the work is embodied or on which it is recorded.

(4) A work qualifies for publication right protection only if -

(a) first publication is in the EEA, and

(b) the publisher of the work is at the time of first publication a national of an EEA State,

and where two or more persons jointly publish the work, it is sufficient for the purposes of paragraph (b) if any of them is a national of an EEA State.

(5) No publication right arises from the publication of a work in which Crown copyright or States copyright subsisted.

(6) Publication right expires at the end of the period of 25 years from the end of the calendar year in which the work was first published.

(7) In this section a "**work**" means a literary, dramatic, musical or artistic work or a film.

(8) Expressions used in this section (other than "publication") have the same meaning as in Part I.

Application of copyright provisions to publication right.

197. (1) The substantive provisions of this Ordinance (but not moral rights in copyright works), that is, the relevant provisions of -

- (a) Part II (rights of copyright owner),
- (b) Part III (acts permitted in relation to copyright works),
- (c) Part V (dealings with rights in copyright works),
- (d) Part VI (remedies for infringement), and
- (e) Part VII (copyright licensing),

apply in relation to publication right as in relation to copyright, subject to the following exceptions and modifications.

(2) The following provisions do not apply -

- (a) in Part III (acts permitted in relation to copyright works), sections 77, 84, 87 and 88,
- (b) in Part VI (remedies for infringement), sections 131 to 133,
- (c) in Part VII (copyright licensing), section 143(4).

(3) The following provisions have effect with the modifications indicated -

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- (a) in section 134(1), (5) and (7) (offences of making or dealing in infringing articles, etc.), the maximum punishment on summary conviction is imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the uniform scale or both,
 - (b) in sections 143(2) and (4), 144, 151 and 156(13) for "works of more than one author" substitute "works of more than one publisher".
- (4) The other relevant provisions of this Ordinance, that is -
- (a) in Part I, provisions defining expressions used generally in Part I,
 - (b) in Part VIII, section 187 (territorial waters) and section 188 (Guernsey ships), and
 - (c) in Part IX, section 212 (transitional provisions) and sections 214 to 225 (interpretation and other final provisions),

apply, with any necessary adaptations, for the purposes of supplementing the substantive provisions of this Ordinance as applied by this section.

(5) Except where the context otherwise requires, any other enactment relating to copyright (whether passed or made before or after this Ordinance) applies in relation to publication right as in relation to copyright.

Circumvention of technical devices applied to computer programs

Circumvention of technological measures.

198. (1) This section applies where -

- (a) effective technological measures (within the meaning of section 203) have been applied to a copyright work, and
- (b) a person (A) does anything which circumvents those measures knowing, or with reasonable grounds to know, that he is pursuing that objective.

(2) This section does not apply where a person, for the purposes of research into cryptography, does anything which circumvents effective technological measures unless in so doing, or in issuing information derived from that research, he affects prejudicially the rights of the copyright owner.

(3) The following persons have the same rights against A as a copyright owner has in respect of an infringement of copyright -

- (a) a person -
 - (i) issuing to the public copies of, or
 - (ii) communicating to the public,

the work to which effective technological measures have been applied, and

- (b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a).

(4) The rights conferred by subsection (3) are concurrent, and sections 127(3) and 129(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(5) Sections 131 to 133 apply in relation to proceedings under this section as in relation to proceedings brought by virtue of Part VI.

(6) Subsections (1) to (5) and any other provision of this Ordinance as it has effect for the purposes of those subsections apply, with any necessary adaptations, to rights in performances, publication right and database right.

(7) The provisions of section 12 (presumptions relevant to database right) of the Database Rights (Bailiwick of Guernsey) Ordinance, 2005 apply in proceedings brought by virtue of this section in relation to database right.

Devices and services designed to circumvent technological measures.

199. (1) A person commits an offence if he -

- (a) manufactures for sale or hire,
- (b) imports otherwise than for his private and domestic use,
- (c) in the course of a business -

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- (i) sells or lets for hire,
 - (ii) offers or exposes for sale or hire,
 - (iii) advertises for sale or hire,
 - (iv) possesses, or
 - (v) distributes, or
- (d) distributes, otherwise than in the course of a business, to such an extent as to affect prejudicially the copyright owner,

any device, product or component which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures.

(2) A person commits an offence if he provides, promotes, advertises or markets -

- (a) in the course of a business, or
- (b) otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,

a service the purpose of which is to enable or facilitate the circumvention of effective technological measures.

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(3) Subsections (1) and (2) do not make unlawful anything done by, or on behalf of, law enforcement agencies or any of the intelligence services -

- (a) in the interests of national security, or
- (b) for the purpose of the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution,

and in this subsection "**intelligence services**" has the meaning given in section 67(3) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003¹.

(4) A person guilty of an offence under subsection (1) or (2) is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both,
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(5) 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 -

- (a) the device, product or component, or

(b) the service,

enabled or facilitated the circumvention of effective technological measures.

Devices and services, etc: search warrants and forfeiture.

200. (1) The provisions of sections 136 (search warrants) and 209 (forfeiture of unauthorised decoders) apply to offences under section 199 with the following modifications.

(2) In section 136 the references to an offence under section 208(1) shall be construed as references to an offence under section 199(1) or (2).

(3) In section 209(2)(a) the reference to an offence under section 208(1) shall be construed as a reference to an offence under section 199(1).

(4) In section 209 references to unauthorised decoders shall be construed as references to devices, products or components for the purpose of circumventing effective technological measures.

Rights and remedies in respect of devices and services, etc.

201. (1) This section applies where -

(a) effective technological measures have been applied to a copyright work, and

(b) a person ("B") -

(i) manufactures, imports, distributes, sells or lets for hire, offers or exposes for sale or hire,

advertises for sale or hire, or has in his possession for commercial purposes any device, product or component which, or

(ii) provides services which -

(A) are promoted, advertised or marketed for the purpose of the circumvention of,

(B) have only a limited commercially significant purpose or use other than to circumvent, or

(C) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,

those measures.

(2) The following persons have the same rights against B as a copyright owner has in respect of an infringement of copyright -

(a) a person -

(i) issuing to the public copies of, or

(ii) communicating to the public,

the work to which effective technological measures have been applied,

- (b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a), and
- (c) the owner or exclusive licensee of any intellectual property right in the effective technological measures applied to the work.

(3) The rights conferred by subsection (2) are concurrent, and sections 127(3) and 129(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(4) Further, the persons in subsection (2) have the same rights under sections 125 and 126 (delivery up or seizure of certain articles) in relation to any such device, product or component which a person has in his possession, custody or control with the intention that it should be used to circumvent effective technological measures, as a copyright owner has in relation to any infringing copy.

(5) The rights conferred by subsection (4) are concurrent, and sections 127(3) and 129(1) to (4) apply, as respects anything done under section 125 or 126 by virtue of subsection (4), in relation to persons with concurrent rights as they apply, as respects anything done under section 125 or 126, in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) The following provisions apply in relation to proceedings under this section as in relation to proceedings brought by virtue of Part VI -

- (a) sections 131 to 133 (presumptions as to certain matters relating to copyright), and
- (b) section 141, which applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (4).

(7) In section 122(1) (innocent infringement of copyright) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference to his not knowing or having reason to believe that his acts enabled or facilitated an infringement of copyright.

(8) Subsections (1) to (5), (6)(b) and (7) and any other provision of this Ordinance as it has effect for the purposes of those subsections apply, with any necessary adaptations, to rights in performances, publication right and database right.

(9) The provisions of section 12 (presumptions relevant to database right) of the Database Rights (Bailiwick of Guernsey) Ordinance, 2005 apply in proceedings brought by virtue of this section in relation to database right.

Remedy where effective technological measures prevent permitted acts.

202. (1) In this section -

"permitted act" means an act which may be done in relation to copyright works, notwithstanding the subsistence of copyright, by virtue of any provision of this Ordinance,

"voluntary measure or agreement" means -

- (a) any measure taken voluntarily by a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work, or
- (b) any agreement between a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work and another party,

the effect of which is to enable a person to carry out a permitted act.

(2) Where the application of any effective technological measure to a copyright work prevents a person from carrying out a permitted act in relation to that work, then that person or a person being a representative of a class of persons prevented from carrying out a permitted act may issue a notice of complaint to the Department.

(3) Following receipt of a notice of complaint, the Department may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Department to be requisite or expedient for the purpose of -

- (a) establishing whether any voluntary measure or agreement relevant to the copyright work the subject of the complaint subsists, or
- (b) (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or

exclusive licensee of that copyright work makes available to the complainant the means of carrying out the permitted act the subject of the complaint to the extent necessary to so benefit from that permitted act.

- (4) The Department may also give directions -
- (a) as to the form and manner in which a notice of complaint in subsection (2) may be delivered to it,
 - (b) as to the form and manner in which evidence of any voluntary measure or agreement may be delivered to it, and
 - (c) generally as to the procedure to be followed in relation to a complaint made under this section,

and shall publish directions given under this subsection in such manner as in its opinion will secure adequate publicity for them.

(5) It shall be the duty of any person to whom a direction is given under subsection (3)(a) or (b) to give effect to that direction.

(6) The obligation to comply with a direction given under subsection (3)(b) is a duty owed to the complainant or, where the complaint is made by a representative of a class of persons, to that representative and to each person in the class represented; and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

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(7) Any direction under this section may be varied or revoked by a subsequent direction under this section.

(8) Any direction given under this section shall be in writing.

(9) This section does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(10) This section applies only where a complainant has lawful access to the protected copyright work, or where the complainant is a representative of a class of persons, where the class of persons has lawful access to the work.

(11) Subsections (1) to (10) apply with any necessary adaptations to -

(a) rights in performances, and in this context the expression "permitted act" refers to an act that may be done by virtue of any provision of Schedule 1 to the Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005,

(b) database right, and in this context the expression "permitted act" refers to an act that may be done by virtue of -

(i) any provision of this Ordinance, or

- (ii) section 10 of, or any provision of Schedule 1 to, the Database Rights (Bailiwick of Guernsey) Ordinance, 2005, and
- (c) publication right.

Interpretation of sections 198 to 202.

203. (1) In sections 198 to 202, "**technological measures**" are any technology, device or component which is designed, in the normal course of its operation, to protect a copyright work.

(2) Such measures are "**effective**" if the use of the work is controlled by the copyright owner through -

- (a) an access control or protection process such as encryption, scrambling or other transformation of the work, or
- (b) a copy control mechanism,

which achieves the intended protection.

(3) In this section, the reference to -

- (a) protection of a work, is to the prevention or restriction of acts that are not authorised by the copyright owner of that work and are restricted by copyright, and

- (b) use of a work, does not extend to any use of the work that is outside the scope of the acts restricted by copyright.

Electronic rights management information.

204. (1) This section applies where a person (C), knowingly and without authority, removes or alters electronic rights management information which -

- (a) is associated with a copy of a copyright work, or
- (b) appears in connection with the communication to the public of a copyright work,

and where C knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.

(2) This section also applies where a person (D), knowingly and without authority, distributes, imports for distribution or communicates to the public copies of a copyright work from which electronic rights management information -

- (a) associated with the copies, or
- (b) appearing in connection with the communication to the public of the work,

has been removed or altered without authority and where D knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.

(3) A person issuing copies of, or communicating, the work to the public, has the same rights against C and D as a copyright owner has in respect of an infringement of copyright.

(4) The copyright owner or his exclusive licensee, if he is not the person issuing copies of, or communicating, the work to the public, also has the same rights against C and D as he has in respect of an infringement of copyright.

(5) The rights conferred by subsections (3) and (4) are concurrent, and sections 127(3) and 129(1) to (4) apply in proceedings under this section in relation to persons with concurrent rights as they apply in proceedings mentioned in those provisions in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) Sections 131 to 133 (presumptions) apply in relation to proceedings under this section.

(7) In this section "rights management information" means any information provided by the copyright owner or the holder of any right under copyright which identifies the work, the author, the copyright owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information.

(8) Subsections (1) to (6), and any other provision of this Ordinance as it has effect for the purposes of those subsections, apply, with any necessary adaptations, to rights in performances, publication right and database right.

(9) The provisions of section 12 (presumptions relevant to database right) of the Database Rights (Bailiwick of Guernsey Ordinance, 2005 apply in proceedings brought by virtue of this section in relation to database right.

Computer programs

Avoidance of certain terms.

205. (1) Where a person has the use of a computer program under an agreement, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict -

- (a) the making of any back-up copy of the program which it is necessary for him to have for the purposes of the agreed use,
- (b) where the conditions in section 67(2) are met, the decompiling of the program, or
- (c) the observing, studying or testing of the functioning of the program in accordance with section 68.

(2) In this section "**decompiling**", in relation to a computer program, has the same meaning as in section 67.

Databases

Avoidance of certain terms relating to databases.

206. Where under an agreement a person has a right to use a database or part of a database, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict the performance of any act which would, but for

section 70, infringe the copyright in the database.

Fraudulent reception of programmes

Offence of fraudulently receiving programmes.

207. A person who dishonestly receives a programme included in a broadcasting service provided from a place within the United Kingdom or the Bailiwick with intent to avoid payment of any charge applicable to the reception of the programme commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Unauthorised decoders.

208. (1) A person commits an offence if he -

- (a) makes, imports, distributes, sells or lets for hire or offers or exposes for sale or hire any unauthorised decoder,
- (b) has in his possession for commercial purposes any unauthorised decoder,
- (c) installs, maintains or replaces for commercial purposes any unauthorised decoder, or
- (d) advertises any unauthorised decoder for sale or hire or otherwise promotes any unauthorised decoder by means of commercial communications.

(2) A person guilty of an offence under subsection (1) is liable -

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- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years, or to a fine, or to both.

(3) 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 grounds for knowing, that the decoder was an unauthorised decoder.

(4) In this section -

"apparatus" includes any device, component or electronic data (including software),

"conditional access technology" means any technical measure or arrangement whereby access to encrypted transmissions in an intelligible form is made conditional on prior individual authorisation,

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

"encrypted" includes subjected to scrambling or the operation of cryptographic envelopes, electronic locks, passwords or any other analogous application,

"transmission" means -

- (a) any programme included in a broadcasting service which is provided from a place in the United Kingdom, another member State or the Bailiwick, or
- (b) an information society service (within the meaning of Directive 98/34/EC of the European Parliament and of the Council of 22nd June 1998, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20th July 1998) which is provided from a place in the United Kingdom or any other member State, and

"**unauthorised**", in relation to a decoder, means that the decoder is designed or adapted to enable an encrypted transmission, or any service of which it forms part, to be accessed in an intelligible form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for accessing the transmission or service (whether by the circumvention of any conditional access technology related to the transmission or service or by any other means).

Forfeiture of unauthorised decoders.

209. (1) Where, in the Bailiwick, unauthorised decoders have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the unauthorised decoders.

- (2) For the purposes of this section "**relevant offence**" means -
 - (a) an offence under section 208(1) (criminal liability for making, importing, etc, unauthorised decoders), or

(b) an offence involving dishonesty or deception.

(3) An application under this section may be made -

(a) where proceedings have been brought in any court for a relevant offence relating to some or all of the unauthorised decoders, to that court, or

(b) where no application for the forfeiture of the unauthorised decoders has been made under paragraph (a), by way of complaint to the magistrate's court.

(4) On an application under this section, the court shall make an order for the forfeiture of any unauthorised decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorised decoders.

(5) The court may infer for the purposes of this section that such an offence has been committed in relation to any unauthorised decoders if it is satisfied that such an offence has been committed in relation to unauthorised decoders which are representative of the unauthorised decoders in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(6) A person aggrieved by an order made under this section by the court, or by a decision of the court not to make such an order, may appeal against the order or decision as against a conviction or, as the case may be, as against an acquittal by that court of an offence

(7) An order under this section may contain such provision as

appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(8) Subject to subsection (9), where any unauthorised decoders are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.

(9) On making an order under this section the court may direct that the unauthorised decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under section 210 in relation to the unauthorised decoders in question, or dealt with in such other way as the court considers appropriate.

(10) For the purposes of this section "**magistrate's court**" means -

- (a) where the application is to be made in Alderney, the Court of Alderney,
- (b) where the application is to be made in Sark, the Court of the Seneschal, and
- (c) in any other case, the Magistrate's Court in Guernsey.

Rights and remedies in respect of apparatus, etc.

210. (1) A person who -

- (a) makes charges for the reception of programmes included in a broadcasting service provided from a place within the United Kingdom, another member State or the Bailiwick,

- (b) sends encrypted transmissions of any other description from a place in the United Kingdom, another member State or the Bailiwick, or
- (c) provides conditional access services from a place in the United Kingdom, another member State or the Bailiwick,

is entitled to the following rights and remedies.

(2) That person has the same rights and remedies against a person-

- (a) who -
 - (i) makes, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire,
 - (ii) has in his possession for commercial purposes, or
 - (iii) installs, maintains or replaces for commercial purposes,

any apparatus designed or adapted to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other

transmissions when they are not entitled to do so,

- (b) who publishes or otherwise promotes by means of commercial communications any information which is calculated to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so,

as a copyright owner has in respect of an infringement of copyright,.

(3) That person has the same rights under section 125 or 126 (delivery up or seizure of certain articles) in relation to that apparatus as a copyright owner has in relation to an infringing copy.

(4) In section 122(1) (innocent infringement of copyright) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference to his not knowing or having reason to believe that his acts infringed the rights conferred by this section.

(5) Section 141 (order as to disposal of infringing copy or other article) applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (3).

(6) In this section -

- (a) **"apparatus"**, **"conditional access technology"** and **"encrypted"** have the same meanings as in section

208,

- (b) "**transmission**" includes transmissions as defined in that section, and
- (c) "**conditional access services**" means services comprising the provision of conditional access technology.

Supplementary provisions as to fraudulent reception.

211. (1) The Department may by regulations -

- (a) provide that section 207 applies in relation to programmes included in services provided from a country outside the United Kingdom and the Bailiwick, and
- (b) provide that section 210 applies in relation to such programmes and to encrypted transmissions sent from such a country.

(2) Where sections 207 and 210 apply in relation to a broadcasting service, they also apply to any service run for the person providing that service, or a person providing programmes for that service, which consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both.

(3) In sections 207 to 210 and in this section "**broadcasting**" and "**programme**" and related expressions have the same meanings as in Part I.

Transitional provisions and savings

Transitional provisions and savings.

212. Schedule 1 contains transitional provisions and savings relating to works made, and acts or events occurring, before the commencement of this Ordinance, and otherwise in respect of the operation of the provisions of this Ordinance.

Rights and privileges under other enactments or the general law.

213. (1) Nothing in this Ordinance affects -
- (a) any right or privilege of any person under any enactment (except where the enactment is expressly repealed, amended or modified by this Ordinance),
 - (b) any right or privilege of the Crown subsisting otherwise than under an enactment,
 - (c) any right or privilege of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,
 - (d) the right of the States or any person deriving title from the States to sell, use or otherwise deal with articles forfeited under the laws relating to customs and excise, or
 - (e) the operation of any rule of law relating to breaches of trust or confidence.
- (2) Subject to those savings, no copyright or right in the nature of

copyright shall subsist otherwise than by virtue of this Ordinance or some other enactment in that behalf.

(3) Nothing in this Ordinance affects any rule of law preventing or restricting the enforcement of copyright on grounds of public interest or otherwise.

(4) Nothing in this Ordinance affects any right of action or other remedy, whether civil or criminal, available otherwise than under this Ordinance in respect of acts infringing any of the rights conferred by Part IV (moral rights).

(5) The savings in subsection (1) have effect subject to sections 190(5) and 192(6) (copyright in Acts, Measures and Projets de Loi: exclusive of other rights in the nature of copyright).

Interpretation and other final provisions

General provisions as to construction.

214. (1) This Ordinance restates and amends the law of copyright, that is, the provisions of the Copyright Act 1911¹ as it had effect in the Bailiwick immediately before the commencement of this Ordinance.

(2) A provision of this Ordinance which corresponds to a provision of the previous law shall not be construed as departing from the previous law merely because of a change of expression.

(3) Decisions under the previous law may be referred to for the

¹ An Act of Parliament (1 & 2 Geo. 5, c. 46); in force in the Bailiwick 1st July, 1912 (see Billet d'État for June, 1912).

purpose of establishing whether a provision of this Ordinance departs from the previous law, or otherwise for establishing the true construction of this Ordinance.

Meaning of EEA national and EEA State.

215. (1) In this Ordinance -

- (a) "**the EEA**" means the European Economic Area,
- (b) "**EEA national**" means a national of an EEA State,
and
- (c) "**EEA State**" means a state which is a contracting party to the EEA Agreement.

(2) References in this Ordinance to a person being an EEA national shall be construed in relation to a body corporate as references to its being incorporated under the law of an EEA State.

(3) The "**EEA Agreement**" means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993.

Construction of references to copyright owner.

216. (1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Ordinance is the person who is entitled to the aspect of copyright relevant for that purpose.

(2) Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in this Ordinance to the copyright owner

are to all the owners, so that, in particular, any requirement of the licence of the copyright owner requires the licence of all of them.

Meaning of "educational establishment" and related expressions.

217. (1) The expression "**educational establishment**" in any provision of this Ordinance means -

- (a) any school, and
- (b) any other description of educational establishment specified for the purposes of this Ordinance, or that provision, by regulations of the Department.

(2) The Department may by regulations provide that the provisions of this Ordinance relating to educational establishments shall apply, with any exceptions, adaptations and modifications specified in the regulations, in relation to teachers who are employed by the States or by any other person or body specified in the regulations to give instruction elsewhere to pupils who are unable to attend an educational establishment.

(3) Regulations under subsection (1)(b) may specify a description of educational establishment by reference to the subordinate legislation or other instruments from time to time in force under any enactment specified in the regulations.

(4) In relation to an educational establishment the expressions "**teacher**" and "**pupil**" in this Ordinance include, respectively, any person who gives and any person who receives instruction.

(5) References in this Ordinance to anything being done "on

behalf of" an educational establishment are to its being done for the purposes of that establishment by any person.

Meaning of publication and commercial publication.

218. (1) In this Ordinance "**publication**", in relation to a work -

- (a) means the issue of copies to the public, and
- (b) includes, in the case of a literary, dramatic, musical or artistic work, making it available to the public by means of an electronic retrieval system,

and related expressions shall be construed accordingly.

(2) In this Ordinance "**commercial publication**", in relation to a literary, dramatic, musical or artistic work, means -

- (a) issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public, or
- (b) making the work available to the public by means of an electronic retrieval system,

and related expressions shall be construed accordingly.

(3) In the case of a work of architecture in the form of a building, or an artistic work incorporated in a building, construction of the building shall be treated as equivalent to publication of the work.

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(4) The following do not constitute publication for the purposes of this Ordinance and references to commercial publication shall be construed accordingly -

- (a) in the case of a literary, dramatic or musical work -
 - (i) the performance of the work, or
 - (ii) the communication to the public of the work (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 communication to the public of the work (otherwise than for the purposes of an electronic retrieval system),
- (c) in the case of a sound recording or film -

- (i) the work being played or shown in public, or
- (ii) the communication to the public of the work.

(5) References in this Ordinance to publication or commercial publication do not include publication which is merely colourable and not intended to satisfy the reasonable requirements of the public.

(6) No account shall be taken for the purposes of this section of any unauthorised act.

Requirement of signature: application in relation to body corporate.

219. (1) The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal -

- (a) section 100(3)(b) (assertion by licensor of right to identification of author in case of public exhibition of copy made in pursuance of the licence),
- (b) section 112(3) (assignment of copyright),
- (c) section 113(1) (assignment of future copyright),
- (d) section 114(1) (grant of exclusive licence).

(2) The requirement in the following provisions that an instrument be signed by a person is satisfied in the case of a body corporate by the affixing of its seal -

- (a) section 100(2)(b) (assertion by instrument in writing of right to have author identified), and
- (b) section 109(2) (waiver of moral rights).

Interpretation.

220. (1) In this Ordinance, unless the context requires otherwise, the expressions set out in this subsection shall be construed as follows -

"accessible copy" : see section 43,

"acts restricted by the copyright" : see section 19,

"adaptations" : see section 25,

"apparatus" : see section 208,

"approved body" : see section 39(12),

"article", in the context of an article in a periodical, includes an item of any description,

"artistic work" : see section 4,

"author" : see section 10,

"Bailiff" : see section 136,

"Bailiwick" means the Bailiwick of Guernsey and the territorial

waters adjacent to the Bailiwick,

"broadcast" : see section 7 (and section 165),

"building" : see section 4,

"business" includes a trade or profession,

"cable operator " : see section 180,

"cable re-transmission" : see section 180,

"collecting society" : see section 117,

"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,

"commercial publication" : see section 218,

"copies", "copying" and related expressions : see section 20,

"copyright licences" : see section 143,

"copyright work" : see section 1,

"**Community Treaties**" has the same meaning as in the European Communities (Bailiwick of Guernsey) Law, 1973^m,

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

"**country**" includes any territory,

"**country of origin**" : see section 18,

"**Crown**", except in section 189, means the Crown in right of the Bailiwick,

"**Crown copyright**" : see section 189,

"**database**" : see section 3,

"**decoder**" : see section 208,

"**decompile**" : see section 67,

"**department of the States**" means any department, council or committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, howsoever called or styled,

^m Ordres en Conseil Vol. XXIV, p. 87; Vol. XXVII, p. 242; Vol. XXIX, pp. 127 and 419 and cf. No. I of 1996; Ordinances No. XIX of 1994; No. XVII of 1998; No. XLVII of 2001 and No. XVIII of 2003.

"Department" means the States Commerce and Employment Department,

"design" : see section 71,

"dramatic work" : see section 3,

"educational establishment" : see section 217,

"EEA" and related expressions : see section 215,

"effective technological measures" : see section 203,

"electronic" means actuated by one or more of the following types of energy : electric, magnetic, electro-magnetic (including optical), electro-chemical or electro-mechanical,

"in electronic form" means in a form usable only by electronic means,

"employment" means employment under a contract of service or of apprenticeship (whether written or oral, express or implied), and related expressions shall be construed accordingly,

"enactment" includes any Law, Ordinance, Act of Parliament and Order in Council, and any subordinate legislation made thereunder,

"encrypted" : see section 208,

"European Economic Community" has the meaning given by

section 1(1) of the European Communities (Bailiwick of Guernsey) Law, 1973,

"exclusive licence" : see section 114,

"excepted sound recording" : see section 93,

"facsimile copy" includes a copy which is reduced or enlarged in scale,

"film" : see section 6,

"future copyright" : see section 113,

"government department" of the United Kingdom includes any Northern Ireland department and any part of the Scottish or Welsh Administration,

"graphic work" : see section 4,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"international organisation" means an organisation which has been specified by the Department by regulations under the provisions of this Ordinance,

"infringing article" : see section 105,

"infringing copy" : see section 31,

"judicial proceedings" includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person's legal rights or liabilities,

"legal deposit library" : see section 59,

"lending" : see sections 22 and 43,

"licensing body" : see section 143,

"licensing scheme" : see section 143,

"literary work" : see section 3,

"musical work" : see section 3,

"needletime" : see section 165,

"Ordinary Court" means the Royal Court sitting as an Ordinary Court, constituted in accordance with subsection (2),

"prescribed" means prescribed by regulations (or, if the context so requires, by an Order) made by the Department,

"permitted act" : see section 202,

"performance" : see section 23,

"photograph" : see section 4,

"police officer" means a member of the salaried police force of the Island of Guernsey and -

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a member of the Alderney Special Constabulary established pursuant to section 47 of the Government of Alderney Law, 2004,
- (c) in relation to Sark, the Constable and the Vingtenier,

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

"prospective owner" : see section 113,

"published edition" : see section 9,

"public library" means any library administered by or on behalf of the States of Guernsey, States of Alderney or Chief Pleas of Sark or any other library or archive designated by regulations of the Department, and includes the Guille-Allés Library and the Priaulx Library,

"publication " : see section 218,

"publication right" : see section 196,

"qualifying individual" : see section 195,

"qualifying person" : see section 182,

"qualifying service" : see section 94,

"regulations" means regulations made by the Department under this Ordinance,

"rental" : see section 22,

"rental right" means the right of a copyright owner to authorise or prohibit the rental of copies of the work (see section 22),

"reprographic copy" and **"reprographic copying"** refer to copying by means of a reprographic process,

"reprographic process" means a process -

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

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

"sculpture" : see section 4,

"service provider " : see section 123,

"sound recording" : see sections 5 and 165,

"States" means the States of Guernsey,

"States copyright" : see section 191,

"States proceedings" means proceedings in the States of Deliberation, the States of Alderney or the Chief Pleas of Sark,

"statutory register" : see section 62,

"subordinate legislation" means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"sufficient acknowledgment" means an acknowledgment identifying the work in question by its title or other description, and identifying the author unless -

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

"sufficient disclaimer", in relation to an act capable of infringing the right conferred by section 102 (right to object to derogatory treatment of work), means a clear and reasonably prominent indication -

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

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

"telecommunications system" means a system for conveying visual images, sounds or other information by electronic means,

"terms of payment" : see section 165,

"the 1922 Law" means the Loi ayant rapport aux Patentes, Dessins, et Marques de Fabrique, 1922ⁿ,

"typeface" includes an ornamental motif used in printing,

"unauthorised", as regards anything done in relation to a work, means done otherwise than -

- (a) by or with the licence of the copyright owner, or

ⁿ Ordres en Conseil Vol. VII, p. 1.

- (b) if copyright does not subsist in the work, by or with the licence of the author or, in a case where section 12(2) would have applied, the author's employer or, in either case, persons lawfully claiming under him, or
- (c) in pursuance of section 63 (copying, etc. of certain material by the Crown),

"uniform scale" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^o,

"unknown authorship" : see section 10,

"visually impaired person" : see section 43,

"work of joint authorship" : see section 11,

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

(2) For the purposes of this Ordinance, the Ordinary Court -

- (a) has, in relation to functions conferred on it by this Ordinance, jurisdiction throughout the Bailiwick,

^o Ordres en Conseil Vol. XXXI, p. 278.

(b) is constituted by the Bailiff sitting unaccompanied by the Jurats, and

(c) may appoint one or more assessors to assist it in the determination of the matter before it.

(3) References in this Ordinance to an enactment or Community instrument are references thereto as from time to time amended, repealed and replaced (with or without modification), extended or applied.

(4) For the avoidance of doubt and unless the context requires otherwise, a word or expression used in this Ordinance that is not defined in subsection (1) shall, where defined in the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^P, have the same meaning as in that Law.

(5) The Interpretation (Guernsey) Law, 1948^q applies to the interpretation of this Ordinance throughout the Bailiwick.

General provisions as to subordinate legislation.

221. (1) An order or regulations under this Ordinance -

(a) may be amended or repealed by a subsequent order or (as the case may be) regulations hereunder,

(b) may contain such consequential, incidental,

^P Order in Council No. XIV of 2004.

^q Ordres en Conseil Vol. XIII, p. 355.

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supplementary and transitional provision as may appear to be necessary or expedient, and

- (c) may contain provision making consequential amendments to this Ordinance.

(2) Any power conferred by this Ordinance to make an order or regulations may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

- (b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) An order or regulation made by the Department under this

Ordinance shall be laid before a meeting of the States as soon as possible after being made and, if at that or the next meeting the States resolve that the order or regulation be annulled, then it shall cease to have effect, but without prejudice to anything done under it or to the making of a new order or regulation (as the case may be).

Repeals and disapplications.

222. Schedule 2 specifies enactments which are repealed or (as the case may be) disappplied to the extent set out in that Schedule.

Citation.

223. This Ordinance may be cited as the Copyright (Bailiwick of Guernsey) Ordinance, 2005.

Extent.

224. This Ordinance has effect throughout the Bailiwick.

Commencement.

225. This Ordinance shall come into force on the 1st day of January, 2006.

SCHEDULE 1

COPYRIGHT: TRANSITIONAL PROVISIONS AND SAVINGS

Section 212

Introductory

1. (1) In this Schedule "**the 1911 Act**" means the Copyright Act 1911^r as it had effect in the Bailiwick immediately before commencement.

(2) References in this Schedule to "**commencement**", without more, are to the date on which the provisions of this Ordinance come into force.

(3) References in this Schedule to "**existing works**" are to works made before commencement, and for this purpose a work of which the making extended over a period shall be taken to have been made when its making was completed.

2. In relation to the 1911 Act -

(a) references in this Schedule to copyright include the right conferred by section 24 of that Act in substitution for a right subsisting immediately before the 1st July, 1912,

(b) references in this Schedule to copyright in a sound

^r An Act of Parliament (1 & 2 Geo. 5, c. 46); in force in the Bailiwick 1st July, 1912 (see Billet d'État for June, 1912).

recording are to the copyright under that Act in records embodying the recording, and

- (c) references in this Schedule to copyright in a film are to any copyright under that Act in the film (so far as it constituted a dramatic work for the purposes of that Act) or in photographs forming part of the film.

General principles: continuity of the law

3. The provisions of this Ordinance apply in relation to things existing at commencement as they apply in relation to things coming into existence after commencement, subject to any express provision to the contrary.

4. (1) The provisions of this paragraph have effect for securing the continuity of the law so far as the provisions of this Ordinance re-enact (with or without modification) the provisions of the 1911 Act.

(2) A reference in any enactment, subordinate legislation, instrument or other document to copyright, or to a work or other subject-matter in which copyright subsists, which apart from this Ordinance would be construed as referring to copyright under the 1911 Act, shall be construed, so far as may be required for continuing its effect, as being, or as the case may require including, a reference to copyright under this Ordinance or to works in which copyright subsists under this Ordinance.

(3) Anything done (including subordinate legislation made), or having effect as done, under or for the purposes of a provision repealed or disappplied by this Ordinance has effect as if done under or for the purposes of the corresponding provision of this Ordinance.

(4) References (express or implied) in this Ordinance or any other enactment, subordinate legislation, instrument or document to any of the provisions of this Ordinance shall, so far as the context permits, be construed as including, in relation to times, circumstances and purposes before commencement, a reference to the corresponding provisions of the 1911 Act.

(5) A reference (express or implied) in any enactment, subordinate legislation, instrument or other document to a provision repealed or disappplied by this Ordinance shall be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of this Ordinance.

(6) The provisions of this paragraph have effect subject to any specific transitional provision or saving and to any express amendment made by this Ordinance.

Subsistence of copyright

5. (1) Copyright subsists in an existing work after commencement only if copyright subsisted in it immediately before commencement.

(2) Subparagraph (1) does not prevent an existing work qualifying for copyright protection after commencement -

(a) under section 183 (qualification by virtue of first publication), or

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- (b) by virtue of regulations under section 185 (application of this Ordinance to countries to which it does not extend).

6. (1) No copyright subsists in a film, as such, made before the 1st January, 2006.

(2) Where a film made before that date was an original dramatic work within the meaning of the 1911 Act, the provisions of this Ordinance have effect in relation to the film as if it was an original dramatic work within the meaning of this Ordinance.

(3) The provisions of this Ordinance have effect in relation to photographs forming part of a film made before the 1st January, 2006 as they have effect in relation to photographs not forming part of a film.

7. No copyright subsists in -

- (a) a wireless broadcast made before the 1st January, 2006, or
- (b) a broadcast by cable made before the 1st January, 2006,

and any such broadcast shall be disregarded for the purposes of section 16(5) (duration of copyright in repeats).

8. No copyright subsists in the typographical arrangement of a published edition first published before 1st January 2006 or in the typographical arrangement of a published edition first published after commencement of this

Ordinance if, or to the extent that, it reproduces the typographical arrangement of the previous published edition.

Authorship of work

9. The question who was the author of an existing work shall be determined in accordance with the provisions of this Ordinance for the purposes of the rights conferred by Part IV (moral rights), and for all other purposes shall be determined in accordance with the law in force at the time the work was made.

First ownership of copyright

10. The question who was first owner of copyright in an existing work shall be determined in accordance with the law in force at the time the work was made.

Duration of copyright in existing works

11. (1) In the case of literary, dramatic, musical or artistic works existing before commencement of this Ordinance, section 13 of this Ordinance applies.

(2) In the case of sound recordings made and published before commencement of this Ordinance, section 14 of this Ordinance applies.

(3) The above provisions do not apply to works subject to Crown copyright or States copyright (see paragraph 23 and paragraph 24.)

(4) To the extent that copyright subsists in any other existing works, it continues to subsist until the last date on which it would have expired under the provisions of the 1911 Act.

The question which provision applies to a work shall be determined by reference to the facts immediately before commencement.

Acts infringing copyright

12. The provisions of Parts II and III as to the acts constituting an infringement of copyright apply only in relation to acts done after commencement, and the provisions of the 1911 Act continue to apply in relation to acts done before commencement.

Moral rights

13. No act done before commencement is actionable by virtue of any provision of Part IV (moral rights).

14. (1) The following provisions have effect with respect to the rights conferred by -

(a) section 99 (right to be identified as author or director),
and

(b) section 102 (right to object to derogatory treatment of work).

(2) The rights do not apply -

- (a) in relation to a literary, dramatic, musical or artistic work of which the author died before commencement, or
- (b) in relation to a film made before commencement.

(3) The rights in relation to an existing literary, dramatic, musical or artistic work 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 commencement may be done without infringing copyright,
- (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.

15. The right conferred by section 107 (right to privacy of certain photographs and films) does not apply to photographs taken or films made before commencement.

Assignments and licences

16. (1) Any document made or event occurring before commencement which had any operation -

- (a) affecting the ownership of the copyright in an existing work, or

- (b) creating, transferring or terminating an interest, right or licence in respect of the copyright in an existing work,

has the corresponding operation in relation to copyright in the work under this Ordinance.

(2) Expressions used in such a document shall be construed in accordance with their effect immediately before commencement.

17. (1) Where the author of a literary, dramatic, musical or artistic work was the first owner of the copyright in it, no assignment of the copyright and no grant of any interest in it, made by him (otherwise than by will) after the 1st July, 1912, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years from the death of the author.

(2) The reversionary interest in the copyright expectant on the termination of that period may after commencement be assigned by the author during his life but in the absence of any assignment shall, on his death, devolve on his legal personal representatives as part of his estate.

(3) Nothing in this paragraph affects -

- (a) an assignment of the reversionary interest by a person to whom it has been assigned,
- (b) an assignment of the reversionary interest after the death of the author by his personal representatives or any person becoming entitled to it, or

- (c) an assignment of the copyright after the reversionary interest has fallen in.

(4) Nothing in this paragraph applies to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(5) In subparagraph (4) "**collective work**" means -

- (a) any encyclopaedia, dictionary, yearbook, or similar work,
- (b) a newspaper, review, magazine, or similar periodical, and
- (c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

Bequests

18. (1) Section 115 (copyright to pass under will with original document or other material thing embodying unpublished work) -

- (a) does not apply where the testator died before the 1st July, 1912, and

- (b) where the testator died on or after that date and before commencement, applies only in relation to an original document embodying a work.

(2) In the case of an author who died before the 1st July, 1912, the ownership after his death of a manuscript of his, where such ownership has been acquired under a testamentary disposition made by him and the manuscript is of a work which has not been published or performed in public, is prima facie proof of the copyright being with the owner of the manuscript.

Remedies for infringement

19. (1) Sections 121 and 122 (remedies for infringement) apply only in relation to an infringement of copyright committed after commencement, and section 6 of the 1911 Act continues to apply in relation to infringements committed before commencement.

(2) Sections 125 and 126 (delivery up or seizure of infringing copies, etc.) apply to infringing copies and other articles made before or after commencement, and section 7 of the 1911 Act (conversion, damages, etc.) does not apply after commencement except for the purposes of proceedings begun before commencement.

(3) Sections 127 to 129 (rights and remedies of exclusive licensee) apply where sections 121 to 126 apply.

(4) Sections 131 to 133 (presumptions) apply only in proceedings brought by virtue of this Ordinance, and section 6(3) of the 1911 Act continues to apply in proceedings brought by virtue of that Act.

20. The provisions of section 134 (criminal liability for making or dealing with infringing articles, etc.) apply only in relation to acts done after commencement, and section 11 of the 1911 Act (penalties for dealings with infringing copies) continues to apply in relation to acts done before commencement.

Qualification for copyright protection

21. Every work in which copyright subsisted under the 1911 Act immediately before commencement shall be deemed to satisfy the requirements of this Ordinance as to qualification for copyright protection.

Guernsey ships

22. Section 188 (Guernsey ships) does not apply in relation to anything done before commencement.

Crown copyright

23. (1) Section 189 (general provision as to Crown copyright) applies to existing unpublished literary, dramatic, musical or artistic works and applies to all other existing works, if section 18 of the 1911 Act applied to the works immediately before commencement of this Ordinance.

(2) Section 189(1)(b) (first ownership of copyright) has effect subject to any agreement entered into before commencement under section 18 of the 1911 Act.

States copyright

24. Section 191 (general provisions as to States copyright) applies to all existing works including unpublished literary, dramatic, musical or artistic works.

Meaning of "publication"

25. Section 214(3) (construction of building treated as equivalent to publication) applies only where the construction of the building began after commencement.

SCHEDULE 2

REPEALS AND DISAPPLICATIONS

Section 222

	SHORT TITLE	EXTENT OF REPEAL/DISAPPLICATION
1.	Loi relative aux droits de Propriété Musicale, 1907 ^s	Repealed
2.	The Copyright Act 1911 ^v	Disapplied subject to the provisions of Schedule 1
3.	The Copyright, Designs and Patents Act 1988 (Guernsey) Order 1989 ^w	Disapplied in full

^s Ordres en Conseil Vol. IV, p. 141.

^t Extended to the Bailiwick on 1st December 1989 (S.I. 1989/1997).