



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER X

##### MISCELLANEOUS AND GENERAL

##### *Crown and Parliamentary copyright*

### 163 Crown copyright

- (1) Where a work is made by Her Majesty or by an officer or servant of the Crown in the course of his duties—
  - (a) the work qualifies for copyright protection notwithstanding section 153(1) (ordinary requirement as to qualification for copyright protection), and
  - (b) Her Majesty is the first owner of any copyright in the work.
- (2) Copyright in such a work is referred to in this Part 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 within subsection (1), this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

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- (5) Except as mentioned above, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Crown copyright as to other copyright.
- (6) This section does not apply to a work if, or to the extent that, Parliamentary copyright subsists in the work (see sections 165 and 166).

#### **164 Copyright in Acts and Measures**

- (1) Her Majesty is entitled to copyright in every Act of Parliament 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 Part to Crown copyright (except in section 163) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Crown copyright.
- (4) No other copyright, or right in the nature of copyright, subsists in an Act or Measure.

#### **165 Parliamentary copyright**

- (1) Where a work is made by or under the direction or control of the House of Commons or the House of Lords—
  - (a) the work qualifies for copyright protection notwithstanding section 153(1) (ordinary requirement as to qualification for copyright protection), and
  - (b) the House by whom, or under whose direction or control, the work is made is the first owner of any copyright in the work, and if the work is made by or under the direction or control of both Houses, the two Houses are joint first owners of copyright.
- (2) Copyright in such a work is referred to in this Part as “Parliamentary copyright”, notwithstanding that it may be, or have been, assigned to another person.
- (3) Parliamentary 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 House of Commons or the House of Lords include—
  - (a) any work made by an officer or employee of that House in the course of his duties, and
  - (b) any sound recording, film, live broadcast or live cable programme of the proceedings of that House;but a work shall not be regarded as made by or under the direction or control of either House by reason only of its being commissioned by or on behalf of that House.
- (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 House of Commons or the House of Lords, 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 Part, the provisions of this Part apply in relation to Parliamentary copyright as to other copyright.
- (7) The provisions of this section also apply, subject to any exceptions or modifications specified by Order in Council, to works made by or under the direction or control of any other legislative body of a country to which this Part extends; and references in this Part to “Parliamentary copyright” shall be construed accordingly.
- (8) A statutory instrument containing an Order in Council under subsection (7) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **166 Copyright in Parliamentary Bills**

- (1) Copyright in every Bill introduced into Parliament belongs, in accordance with the following provisions, to one or both of the Houses of Parliament.
- (2) Copyright in a public Bill belongs in the first instance to the House into which the Bill is introduced, and after the Bill has been carried to the second House to both Houses jointly, and subsists from the time when the text of the Bill is handed in to the House in which it is introduced.
- (3) Copyright in a private Bill belongs to both Houses jointly and subsists from the time when a copy of the Bill is first deposited in either House.
- (4) Copyright in a personal Bill belongs in the first instance to the House of Lords, and after the Bill has been carried to the House of Commons to both Houses jointly, and subsists from the time when it is given a First Reading in the House of Lords.
- (5) Copyright under this section ceases—
  - (a) on Royal Assent, or
  - (b) if the Bill does not receive Royal Assent, on the withdrawal or rejection of the Bill or the end of the Session:

Provided that, copyright in a Bill continues to subsist notwithstanding its rejection in any Session by the House of Lords if, by virtue of the Parliament Acts 1911 and 1949, it remains possible for it to be presented for Royal Assent in that Session.

- (6) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.
- (7) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having passed in one Session, is reintroduced in a subsequent Session.

## **167 Houses of Parliament: supplementary provisions with respect to copyright**

- (1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, each House of Parliament shall be

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treated as having the legal capacities of a body corporate, which shall not be affected by a prorogation or dissolution.

- (2) The functions of the House of Commons as owner of copyright shall be exercised by the Speaker on behalf of the House; and if so authorised by the Speaker, or in case of a vacancy in the office of Speaker, those functions may be discharged by the Chairman of Ways and Means or a Deputy Chairman.
- (3) For this purpose a person who on the dissolution of Parliament was Speaker of the House of Commons, Chairman of Ways and Means or a Deputy Chairman may continue to act until the corresponding appointment is made in the next Session of Parliament.
- (4) The functions of the House of Lords as owner of copyright shall be exercised by the Clerk of the Parliaments on behalf of the House; and if so authorised by him, or in case of a vacancy in the office of Clerk of the Parliaments, those functions may be discharged by the Clerk Assistant or the Reading Clerk.
- (5) Legal proceedings relating to copyright—
  - (a) shall be brought by or against the House of Commons in the name of “The Speaker of the House of Commons”; and
  - (b) shall be brought by or against the House of Lords in the name of “The Clerk of the Parliaments”.

*Other miscellaneous provisions*

**168 Copyright vesting in certain international organisations**

- (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 154 (qualification by reference to author) or section 155 (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 Her Majesty has by Order in Council 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 such longer period as may be specified by Her Majesty by Order in Council for the purpose of complying with the international obligations of the United Kingdom.
- (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.
- (5) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**169 Folklore, &c.: anonymous unpublished works**

- (1) Where in the case of an unpublished literary, dramatic, musical or artistic work of unknown authorship there is evidence that the author (or, in the case of a joint work, any of the authors) was a qualifying individual by connection with a country outside the United Kingdom, it shall be presumed until the contrary is proved that he was such a qualifying individual and that copyright accordingly subsists in the work, subject to the provisions of this Part.
- (2) If under the law of that country a body is appointed to protect and enforce copyright in such works, Her Majesty may by Order in Council designate that body for the purposes of this section.
- (3) A body so designated shall be recognised in the United Kingdom 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) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In subsection (1) a “qualifying individual” means an individual who at the material time (within the meaning of section 154) was a person whose works qualified under that section for copyright protection.
- (6) This section does not apply if there has been an assignment of copyright in the work by the author of which notice has been given to the designated body; and nothing in this section affects the validity of an assignment of copyright made, or licence granted, by the author or a person lawfully claiming under him.

*Transitional provisions and savings***170 Transitional provisions and savings**

Schedule 1 contains transitional provisions and savings relating to works made, and acts or events occurring, before the commencement of this Part, and otherwise with respect to the operation of the provisions of this Part.

**171 Rights and privileges under other enactments or the common law**

- (1) Nothing in this Part affects—
  - (a) any right or privilege of any person under any enactment (except where the enactment is expressly repealed, amended or modified by this Act);
  - (b) any right or privilege of the Crown subsisting otherwise than under an enactment;
  - (c) any right or privilege of either House of Parliament;
  - (d) the right of the Crown or any person deriving title from the Crown to sell, use or otherwise deal with articles forfeited under the laws relating to customs and excise;
  - (e) the operation of any rule of equity 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 Part or some other enactment in that behalf.

- (3) Nothing in this Part affects any rule of law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise.
- (4) Nothing in this Part affects any right of action or other remedy, whether civil or criminal, available otherwise than under this Part in respect of acts infringing any of the rights conferred by Chapter IV (moral rights).
- (5) The savings in subsection (1) have effect subject to section 164(4) and section 166(7) (copyright in Acts, Measures and Bills: exclusion of other rights in the nature of copyright).

### *Interpretation*

#### **172 General provisions as to construction**

- (1) This Part restates and amends the law of copyright, that is, the provisions of the Copyright Act 1956, as amended.
- (2) A provision of this Part 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 purpose of establishing whether a provision of this Part departs from the previous law, or otherwise for establishing the true construction of this Part.

#### **173 Construction of references to copyright owner**

- (1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Part 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 Part 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.

#### **174 Meaning of “educational establishment” and related expressions**

- (1) The expression “educational establishment” in a provision of this Part means—
  - (a) any school, and
  - (b) any other description of educational establishment specified for the purposes of this Part, or that provision, by order of the Secretary of State.
- (2) The Secretary of State may by order provide that the provisions of this Part relating to educational establishments shall apply, with such modifications and adaptations as may be specified in the order, in relation to teachers who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment.
- (3) In subsection (1)(a) “school”—

- (a) in relation to England and Wales, has the same meaning as in the Education Act 1944;
  - (b) in relation to Scotland, has the same meaning as in the Education (Scotland) Act 1962, except that it includes an approved school within the meaning of the Social Work (Scotland) Act 1968; and
  - (c) in relation to Northern Ireland, has the same meaning as in the Education and Libraries (Northern Ireland) Order 1986.
- (4) An order under subsection (1)(b) may specify a description of educational establishment by reference to the instruments from time to time in force under any enactment specified in the order.
- (5) In relation to an educational establishment the expressions “teacher” and “pupil” in this Part include, respectively, any person who gives and any person who receives instruction.
- (6) References in this Part to anything being done “on behalf of” an educational establishment are to its being done for the purposes of that establishment by any person.
- (7) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **175 Meaning of publication and commercial publication**

- (1) In this Part “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 Part “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.
- (4) The following do not constitute publication for the purposes of this Part and references to commercial publication shall be construed accordingly—
- (a) in the case of a literary, dramatic or musical work—
    - (i) the performance of the work, or
    - (ii) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system);
  - (b) in the case of an artistic work—
    - (i) the exhibition of the work,

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- (ii) the issue to the public of copies of a graphic work representing, or of photographs of, a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship,
  - (iii) the issue to the public of copies of a film including the work, or
  - (iv) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system);
- (c) in the case of a sound recording or film—
- (i) the work being played or shown in public, or
  - (ii) the broadcasting of the work or its inclusion in a cable programme service.
- (5) References in this Part to publication or commercial publication do not include publication which is merely colourable and not intended to satisfy the reasonable requirements of the public.
- (6) No account shall be taken for the purposes of this section of any unauthorised act.

#### **176 Requirement of signature: application in relation to body corporate**

- (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—
- section 78(3)(b) (assertion by licensor of right to identification of author in case of public exhibition of copy made in pursuance of the licence),
  - section 90(3) (assignment of copyright),
  - section 91(1) (assignment of future copyright),
  - section 92(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 signature on behalf of the body or by the affixing of its seal—
- section 78(2)(b) (assertion by instrument in writing of right to have author identified),
  - section 87(2) (waiver of moral rights).

#### **177 Adaptation of expressions for Scotland**

In the application of this Part to Scotland—

- “account of profits” means accounting and payment of profits;
- “accounts” means count, reckoning and payment;
- “assignment” means assignation;
- “costs” means expenses;
- “defendant” means defender;
- “delivery up” means delivery;
- “estoppel” means personal bar;
- “injunction” means interdict;
- “interlocutory relief” means interim remedy; and
- “plaintiff” means pursuer.



**178 Minor definitions**

In this Part—

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

“business” includes a trade or profession;

“collective work” means—

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

“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;

“the Crown” includes the Crown in right of Her Majesty’s Government in Northern Ireland or in any country outside the United Kingdom to which this Part extends;

“electronic” means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, and “in electronic form” means in a form usable only by electronic means;

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

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

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

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

“parliamentary proceedings” includes proceedings of the Northern Ireland Assembly or of the European Parliament;

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

- (a) for payment (in money or money’s worth), or
- (b) in the course of a business as part of services or amenities for which payment is made,

on terms that it will or may be returned;

“reprographic 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;

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

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

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“sufficient disclaimer”, in relation to an act capable of infringing the right conferred by section 80 (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;

“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
- (b) if copyright does not subsist in the work, by or with the licence of the author or, in a case where section 11(2) would have applied, the author’s employer or, in either case, persons lawfully claiming under him, or
- (c) in pursuance of section 48 (copying, &c. of certain material by the Crown);

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

“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.

## 179 Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)—

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