



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER I

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

##### *Introductory*

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

- (1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work—
  - (a) original literary, dramatic, musical or artistic works,
  - (b) sound recordings, films, broadcasts or cable programmes, and
  - (c) the typographical arrangement of published editions.
- (2) In this Part “copyright work” means a work of any of those descriptions in which copyright subsists.
- (3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection are met (see section 153 and the provisions referred to there).

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

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

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- (2) In relation to certain descriptions of copyright work the following rights conferred by Chapter 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 77 (right to be identified as author or director),
  - (b) section 80 (right to object to derogatory treatment of work), and
  - (c) section 85 (right to privacy of certain photographs and films).

*Descriptions of work and related provisions*

**3 Literary, dramatic and musical works**

- (1) In this Part—
- “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, and
    - (b) a computer program;
  - “dramatic work” includes a work of dance or mime; and
  - “musical work” means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.
- (2) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise; and references in this Part to the time at which such a work is made are to the time at which it is so recorded.
- (3) It is immaterial for the purposes of subsection (2) whether the work is recorded by or with the permission of the author; and where it is not recorded by the author, nothing in that subsection affects the question whether copyright subsists in the record as distinct from the work recorded.

**4 Artistic works**

- (1) In this Part “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 Part—
- “building” includes any fixed structure, and a part of a building or fixed structure;
  - “graphic work” includes—
    - (a) any painting, drawing, diagram, map, chart or plan, and
    - (b) any engraving, etching, lithograph, woodcut or similar work;
  - “photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;
  - “sculpture” includes a cast or model made for purposes of sculpture.

## **5 Sound recordings and films**

(1) In this Part—

“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; and

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

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

## **6 Broadcasts**

(1) In this Part a “broadcast” means a transmission by wireless telegraphy of visual images, sounds or other information which—

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

and references to broadcasting shall be construed accordingly.

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

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

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

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

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

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

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

## **7 Cable programmes**

(1) In this Part—

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

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

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

(b) for presentation to members of the public,

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

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

(a) a service or part of a service of which it is an essential feature that while visual images, sounds or other information are being conveyed by the person providing the service there will or may be sent from each place of reception, by means of the same system or (as the case may be) the same part of it, information (other than signals sent for the operation or control of the service) for reception by the person providing the service or other persons receiving it;

(b) a service run for the purposes of a business where—

(i) no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system,

(ii) the visual images, sounds or other information are conveyed by the system solely for purposes internal to the running of the business and not by way of rendering a service or providing amenities for others, and

(iii) the system is not connected to any other telecommunications system;

(c) a service run by a single individual where—

(i) all the apparatus comprised in the system is under his control,

(ii) the visual images, sounds or other information conveyed by the system are conveyed solely for domestic purposes of his, and

(iii) the system is not connected to any other telecommunications system;

(d) services where—

(i) all the apparatus comprised in the system is situated in, or connects, premises which are in single occupation, and

(ii) the system is not connected to any other telecommunications system, other than services operated as part of the amenities provided for residents or inmates of premises run as a business;

(e) services which are, or to the extent that they are, run for persons providing broadcasting or cable programme services or providing programmes for such services.

(3) The Secretary of State may by order amend subsection (2) so as to add or remove exceptions, subject to such transitional provision as appears to him to be appropriate.

(4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

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

(6) Copyright does not subsist in a cable programme—

- (a) if it is included in a cable programme service by reception and immediate re-transmission of a broadcast, or
- (b) if it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

## **8 Published editions**

- (1) In this Part “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*

## **9 Authorship of work**

- (1) In this Part “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 or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken;
  - (b) in the case of a broadcast, the person making the broadcast (see section 6(3)) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;
  - (c) in the case of a cable programme, the person providing the cable programme service in which the programme is included;
  - (d) in the case of the typographical arrangement of a published edition, the publisher.
- (3) In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.
- (4) For the purposes of this Part 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 Part the identity of an author shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if his identity is once known it shall not subsequently be regarded as unknown.

## **10 Works of joint authorship**

- (1) In this Part a “work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.
- (2) A broadcast shall be treated as a work of joint authorship in any case where more than one person is to be taken as making the broadcast (see section 6(3)).

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

## **11 First ownership of copyright**

- (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 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 Parliamentary copyright (see sections 163 and 165) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations).

### *Duration of copyright*

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

- (1) Copyright in a literary, dramatic, musical or artistic work expires at the end of the period of 50 years from the end of the calendar year in which the author dies, subject to the following provisions of this section.
- (2) If the work is of unknown authorship, copyright expires at the end of the period of 50 years from the end of the calendar year in which it is first made available to the public; and subsection (1) does not apply if the identity of the author becomes known after the end of that period.

For this purpose making available to the public includes—

- (a) in the case of a literary, dramatic or musical work—
  - (i) performance in public, or
  - (ii) being broadcast or included in a cable programme service;
- (b) in the case of an artistic work—
  - (i) exhibition in public,
  - (ii) a film including the work being shown in public, or
  - (iii) being included in a broadcast or cable programme service;

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

- (3) If the work is computer-generated neither of the above provisions applies 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.
- (4) In relation to a work of joint authorship—
- (a) the reference in subsection (1) to the death of the author shall be construed —
    - (i) if the identity of all the authors is known, as a reference to the death of the last of them to die, and

- (ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last of the authors whose identity is known; and
- (b) the reference in subsection (2) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known.

(5) This section does not apply to Crown copyright or Parliamentary copyright (see sections 163 to 166) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations).

### **13 Duration of copyright in sound recordings and films**

- (1) Copyright in a sound recording or film expires—
  - (a) at the end of the period of 50 years from the end of the calendar year in which it is made, or
  - (b) if it is released before the end of that period, 50 years from the end of the calendar year in which it is released.
- (2) A sound recording or film is “released” when—
  - (a) it is first published, broadcast or included in a cable programme service, or
  - (b) in the case of a film or film sound-track, the film is first shown in public;but in determining whether a work has been released no account shall be taken of any unauthorised act.

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

- (1) Copyright in a broadcast or cable programme expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service.
- (2) Copyright in a repeat broadcast or cable programme expires at the same time as the copyright in the original broadcast or cable programme; and accordingly no copyright arises in respect of a repeat broadcast or cable programme which is broadcast or included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.
- (3) A repeat broadcast or cable programme means one which is a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service.

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

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

## CHAPTER II

### RIGHTS OF COPYRIGHT OWNER

#### *The acts restricted by copyright*

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

- (1) The owner of the copyright in a work has, in accordance with the following provisions of this Chapter, the exclusive right to do the following acts in the United Kingdom—
  - (a) to copy the work (see section 17);
  - (b) to issue copies of the work to the public (see section 18);
  - (c) to perform, show or play the work in public (see section 19);
  - (d) to broadcast the work or include it in a cable programme service (see section 20);
  - (e) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 21);
 and those acts are referred to in this Part as the “acts restricted by the copyright”.
- (2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by the copyright.
- (3) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of it—
  - (a) in relation to the work as a whole or any substantial part of it, and
  - (b) either directly or indirectly;
 and it is immaterial whether any intervening acts themselves infringe copyright.
- (4) This Chapter has effect subject to—
  - (a) the provisions of Chapter III (acts permitted in relation to copyright works), and
  - (b) the provisions of Chapter VII (provisions with respect to copyright licensing).

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

- (1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies shall be construed 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, television broadcast or cable programme includes making a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme.



- (5) Copying in relation to the typographical arrangement of a published edition means making a facsimile copy of the arrangement.
- (6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.

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

- (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 Part to the issue to the public of copies of a work are to the act of putting into circulation copies not previously put into circulation, in the United Kingdom or elsewhere, and not to—
  - (a) any subsequent distribution, sale, hiring or loan of those copies, or
  - (b) any subsequent importation of those copies into the United Kingdom;except that in relation to sound recordings, films and computer programs the restricted act of issuing copies to the public includes any rental of copies to the public.

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

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

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

The broadcasting of the work or its inclusion in a cable programme service is an act restricted by the copyright in—

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

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

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

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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 17 to 20, or subsection (1) above, in relation to an adaptation of the work is also 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 Part “adaptation”—

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

- (i) a translation of the work;
- (ii) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work;
- (iii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;

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

- (4) In relation to a computer program a “translation” includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code, otherwise than incidentally in the course of running the program.

- (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*

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

The copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into the United Kingdom, 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.

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

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 to such an extent as to affect prejudicially the owner of the copyright,

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

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

- (1) Copyright in a work is infringed by a person who, without the licence of the copyright owner—
  - (a) makes,
  - (b) imports into the United Kingdom,
  - (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 broadcasting or inclusion in a cable programme service), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in the United Kingdom or elsewhere.

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

- (1) Where the copyright in a literary, dramatic or musical work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance 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.

**26 Secondary infringement: provision of apparatus for infringing performance, &c**

- (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 so used as to infringe copyright, or
  - (b) in the case of apparatus whose normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright.
- (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 so used as 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 so used as to infringe copyright.

### *Infringing copies*

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

- (1) In this Part “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 also an infringing copy if—
  - (a) it has been or is proposed to be imported into the United Kingdom, and
  - (b) its making in the United Kingdom 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 United Kingdom by virtue of any enforceable Community right within the meaning of section 2(1) of the European Communities Act 1972.
- (6) In this Part “infringing copy” includes a copy falling to be treated as an infringing copy by virtue of any of the following provisions—
  - section 32(5) (copies made for purposes of instruction or examination),
  - section 35(3) (recordings made by educational establishments for educational purposes),
  - section 36(5) (reprographic copying by educational establishments for purposes of instruction),
  - section 37(3)(b) (copies made by librarian or archivist in reliance on false declaration),
  - section 56(2) (further copies, adaptations, &c. of work in electronic form retained on transfer of principal copy),
  - section 63(2) (copies made for purpose of advertising artistic work for sale),
  - section 68(4) (copies made for purpose of broadcast or cable programme), or
  - any provision of an order under section 141 (statutory licence for certain reprographic copying by educational establishments).

## CHAPTER III

### ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

#### *Introductory*

#### **28 Introductory provisions**

- (1) The provisions of this Chapter 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 Chapter that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe the copyright in a work of any description.
- (3) No inference shall be drawn from the description of any act which may by virtue of this Chapter be done without infringing copyright as to the scope of the acts restricted by the copyright in any description of work.
- (4) The provisions of this Chapter are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

#### *General*

#### **29 Research and private study**

- (1) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) Fair dealing with the typographical arrangement of a published edition for the purposes mentioned in subsection (1) does not infringe any copyright in the arrangement.
- (3) Copying by a person other than the researcher or student himself is not fair dealing if—
  - (a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 40 would not permit to be done under section 38 or 39 (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.

#### **30 Criticism, review and news reporting**

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

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- (2) Fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work provided that (subject to subsection (3)) it is accompanied by a sufficient acknowledgement.
- (3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

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

- (1) Copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme.
- (2) Nor is the copyright infringed by the issue to the public of copies, or the playing, showing, broadcasting or inclusion in a cable programme service, of anything whose making was, 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, broadcast or cable programme as includes a musical work or such words, shall not be regarded as incidentally included in another work if it is deliberately included.

### *Education*

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

- (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying—
  - (a) is done by a person giving or receiving instruction, and
  - (b) is not by means of a reprographic process.
- (2) Copyright in a sound recording, film, broadcast or cable programme is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.
- (3) 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.
- (4) Subsection (3) does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.
- (5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose “dealt with” means sold or let for hire or offered or exposed for sale or hire.

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

- (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 such establishments and the inclusion is accompanied by a sufficient acknowledgement.
- (2) Subsection (1) does not authorise the inclusion of more than two excerpts from copyright works by the same author in collections published by the same publisher over any period of five years.
- (3) In relation to any given passage the reference in subsection (2) to excerpts from works by the same author—
  - (a) shall be taken to include excerpts from works by him in collaboration with another, and
  - (b) if the passage in question is from such a work, shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.
- (4) References in this section to the use of a work in an educational establishment are to any use for the educational purposes of such an establishment.

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

- (1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment—
  - (a) by a teacher or pupil in the course of the activities of the establishment, or
  - (b) at the establishment by any person for the purposes of instruction,is not a public performance for the purposes of infringement of copyright.
- (2) The playing or showing of a sound recording, film, broadcast or cable programme before such an 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.

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

- (1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast or cable programme, or in any work included in it.
- (2) This section does not apply if or to the extent that there is a licensing scheme certified for the purposes of this section under section 143 providing for the grant of licences.

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- (3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the 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 or offered or exposed for sale or hire.

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

- (1) Reprographic copies of passages from published literary, dramatic or musical works may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work, or in the typographical arrangement.
- (2) Not more than one per cent. of any work may be copied by or on behalf of an establishment by virtue of this section in any quarter, that is, in any period 1st January to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October to 31st December.
- (3) Copying is not authorised by this section if, or to the extent that, licences are available authorising the copying in question and the person making the copies knew or ought to have been aware of that fact.
- (4) The terms of a licence granted to an educational establishment authorising the reprographic copying for the purposes of instruction of passages from published literary, dramatic or musical works are of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted under this section.
- (5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the 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 or offered or exposed for sale or hire.

### *Libraries and archives*

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

- (1) In sections 38 to 43 (copying by librarians and archivists)—
  - (a) references in any provision to a prescribed library or archive are to a library or archive of a description prescribed for the purposes of that provision by regulations made by the Secretary of State; and
  - (b) references in any provision to the prescribed conditions are to the conditions so prescribed.
- (2) 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 such cases as may be prescribed, he shall not make or supply a copy in the absence of a signed declaration in such form as may be prescribed.
- (3) 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.
- (4) The regulations may make different provision for different descriptions of libraries or archives and for different purposes.
- (5) Regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) References in this section, and in sections 38 to 43, to the librarian or archivist include a person acting on his behalf.

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

- (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in the text, in any illustrations accompanying the text or in the typographical arrangement.
- (2) The prescribed conditions shall include the following—
  - (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
  - (b) that no person is furnished with more than one copy of the same 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.

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

- (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply from a published edition a copy of part of a literary, dramatic or musical work (other than an article in a periodical) without infringing any copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.
- (2) The prescribed conditions shall include the following—
  - (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
  - (b) that no person is furnished with more than one copy of the same material or with a copy of more than a reasonable proportion of any work; and

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- (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.

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

- (1) Regulations for the purposes of sections 38 and 39 (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 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.

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

- (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply to another prescribed library a copy of—
  - (a) an article in a periodical, or
  - (b) the whole or part of a published edition of a literary, dramatic or musical work, without infringing any copyright in the text of the article or, 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.

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

- (1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive—
  - (a) in order to preserve or replace that item by placing the copy in its permanent collection in addition to or in place of it, or
  - (b) in order to replace in the permanent collection of another prescribed library or archive an item which has been lost, destroyed or damaged,
 without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement.
- (2) The prescribed conditions shall include provision for restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question to fulfil that purpose.

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

- (1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or any illustrations accompanying it.
- (2) This 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.
- (3) The prescribed conditions shall include the following—
  - (a) that copies are supplied only to persons satisfying the librarian or archivist that they require them for purposes of research or private study and will not use them for any other purpose;
  - (b) that no person is furnished with more than one copy of the same material; and
  - (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

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

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

#### *Public administration*

#### **45 Parliamentary and judicial proceedings**

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

#### **46 Royal Commissions and statutory inquiries**

- (1) Copyright is not infringed by anything done for the purposes of the proceedings of a Royal Commission or statutory inquiry.
- (2) Copyright is not infringed by anything done for the purpose of reporting any such proceedings held in public; but this shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.
- (3) Copyright in a work is not infringed by the issue to the public of copies of the report of a Royal Commission or statutory inquiry containing the work or material from it.
- (4) In this section—

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“Royal Commission” includes a Commission appointed for Northern Ireland by the Secretary of State in pursuance of the prerogative powers of Her Majesty delegated to him under section 7(2) of the Northern Ireland Constitution Act 1973; and

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

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

- (1) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, any copyright in the material as a literary work 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 purpose of disseminating that information.
- (4) The Secretary of State may by order provide that subsection (1), (2) or (3) shall, in such cases as may be specified in the order, apply only to copies marked in such manner as may be so specified.
- (5) The Secretary of State may by order provide that subsections (1) to (3) apply, to such extent and with such modifications as may be specified in the order—
  - (a) to material made open to public inspection by—
    - (i) an international organisation specified in the order, or
    - (ii) a person so specified who has functions in the United Kingdom under an international agreement to which the United Kingdom is party, or
  - (b) to a register maintained by an international organisation specified in the order, as they apply in relation to material open to public inspection pursuant to a statutory requirement or to a statutory register.
- (6) In this 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 provision made by or under an enactment.
- (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.

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

- (1) This section applies where a literary, dramatic, musical or artistic work has in the course of public business been communicated to the Crown for any purpose, by or with the licence of the copyright owner and a document or other material thing recording or embodying the work is owned by or in the custody or control of the Crown.
- (2) The Crown may, for the purpose for which the work was communicated to it, or any related purpose which could reasonably have been anticipated by the copyright owner, copy the work and issue copies of the work to the public without infringing any copyright in the work.
- (3) The Crown 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.
- (5) This section has effect subject to any agreement to the contrary between the Crown and the copyright owner.

#### **49 Public records**

Material which is comprised in public records within the meaning of the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act (Northern Ireland) 1923 which are open to public inspection in pursuance of that Act, may be copied, and a copy may be supplied to any person, by or with the authority of any officer appointed under that Act, without infringement of copyright.

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

- (1) Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright.
- (2) Subsection (1) applies in relation to an enactment contained in Northern Ireland legislation as it applies in relation to an Act of Parliament.
- (3) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.

### *Designs*

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

- (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) Nor is it an infringement of the copyright to issue to the public, or include in a film, broadcast or cable programme service, anything the making of which was, by virtue of subsection (1), not an infringement of that copyright.
- (3) In this section—

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“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.

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

- (1) This section applies where an artistic work has been exploited, by or with the licence of the copyright owner, by—
  - (a) making by an industrial process articles falling to be treated for the purposes of this Part as copies of the work, and
  - (b) marketing such articles, in the United Kingdom or elsewhere.
- (2) After the end of the period of 25 years from the end of the calendar year in which such 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 mentioned in subsection (1), subsection (2) applies only in relation to that part.
- (4) The Secretary of State may by order make provision—
  - (a) as to the circumstances in which an article, or any description of article, is to be regarded for the purposes of this section as made by an industrial process;
  - (b) excluding from the operation of this section such articles of a primarily literary or artistic character as he thinks fit.
- (5) An order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) 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 or hire.

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

- (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 the Registered Designs Act 1949 as the proprietor of a corresponding design, and
  - (b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation of the registration or for rectifying the relevant entry in the register of designs;

and this is so notwithstanding that the person registered as the proprietor was not the proprietor of the design for the purposes of the 1949 Act.
- (2) In subsection (1) a “corresponding design”, in relation to an artistic work, means a design within the meaning of the 1949 Act which if applied to an article would produce

something which would be treated for the purposes of this Part as a copy of the artistic work.

### *Typefaces*

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

- (1) It is not an infringement of copyright in an artistic work consisting of the design of a typeface—
  - (a) to use the typeface in the ordinary course of typing, composing text, typesetting or printing,
  - (b) to possess an article for the purpose of such use, or
  - (c) to do anything in relation to material produced by such use;and this is so notwithstanding that an article is used which is an infringing copy of the work.
- (2) However, the following provisions of this Part apply in relation to persons making, importing or dealing with articles specifically designed or adapted for producing material in a particular typeface, or possessing such articles for the purpose of dealing with them, as if the production of material as mentioned in subsection (1) did infringe copyright in the artistic work consisting of the design of the typeface—
  - section 24 (secondary infringement: making, importing, possessing or dealing with article for making infringing copy),
  - sections 99 and 100 (order for delivery up and right of seizure),
  - section 107(2) (offence of making or possessing such an article), and
  - section 108 (order for delivery up in criminal proceedings).
- (3) The references in subsection (2) to “dealing with” an article are to selling, letting for hire, or offering or exposing for sale or hire, exhibiting in public, or distributing.

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

- (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 such articles are marketed, the work may be copied by making further such articles, or doing anything for the purpose of making such articles, and anything may be done in relation to articles so made, without infringing copyright in the work.
- (3) In subsection (1) “marketed” means sold, let for hire or offered or exposed for sale or hire, in the United Kingdom or elsewhere.

### *Works in electronic form*

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

- (1) This section applies where a copy of a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser

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to copy the work, or to adapt it or make copies of an adaptation, in connection with his use of it.

- (2) If there are no express terms—
  - (a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer, or
  - (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,
 anything which the purchaser was allowed to do may also be done without infringement of copyright by a transferee; but any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall be treated as an infringing copy for all purposes after the transfer.
- (3) The same applies where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.
- (4) The above provisions also apply 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*

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

- (1) Copyright in a literary, dramatic, musical or artistic work 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 50 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 copyright subsists, or
  - (b) a work in which copyright originally vested in an international organisation by virtue of section 168 and in respect of which an Order under that section specifies a copyright period longer than 50 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.

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

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



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

it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it (or to copy the record, or any such material, and use the copy) for that purpose, provided the following conditions 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 or cable programme;
- (b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;
- (c) the use made of the record or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and
- (d) the use is by or with the authority of a person who is lawfully in possession of the record.

## **59 Public reading or recitation**

- (1) The reading or recitation in public by one person of a reasonable extract from a published literary or dramatic work does not infringe any copyright in the work if it is accompanied by a sufficient acknowledgement.
- (2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service, of a reading or recitation which by virtue of subsection (1) does not infringe copyright in the work, provided that the recording, broadcast or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection.

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

- (1) Where an article on a scientific or technical subject is published in a periodical accompanied by an abstract indicating the contents of the article, it 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 143 providing for the grant of licences.

## **61 Recordings of folksongs**

- (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, provided the conditions in subsection (2) below 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.

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- (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 research or private study and will not use them for any other purpose, and
  - (b) that no person is furnished with more than one copy of the same recording.
- (5) In this section—
  - (a) “designated” means designated for the purposes of this section by order of the Secretary of State, who 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 order of the Secretary of State, and
  - (c) references to the archivist include a person acting on his behalf.
- (6) 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.

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

- (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 such a work is not infringed by—
  - (a) making a graphic work representing it,
  - (b) making a photograph or film of it, or
  - (c) broadcasting or including in a cable programme service a visual image of it.
- (3) Nor is the copyright infringed by the issue to the public of copies, or the broadcasting or inclusion in a cable programme service, of anything whose making was, by virtue of this section, not an infringement of the copyright.

## **63 Advertisement of sale of artistic work**

- (1) It is not an infringement of copyright in an artistic work to copy it, or to issue copies to the public, for the purpose of advertising the sale of the work.
- (2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with for any other purpose, it shall be treated as an infringing copy for the 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 or distributed.

**64 Making of subsequent works by same artist**

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

**65 Reconstruction of buildings**

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: sound recordings, films and computer programs*

**66 Rental of sound recordings, films and computer programs**

- (1) The Secretary of State may by order provide that in such cases as may be specified in the order the rental to the public of copies of sound recordings, films or computer programs shall be treated as licensed by the copyright owner subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (2) No such order shall apply if, or to the extent that, there is a licensing scheme certified for the purposes of this section under section 143 providing for the grant of licences.
- (3) An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies rented, the renter or the circumstances of the rental.
- (4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (5) Copyright in a computer program is not infringed by the rental of copies to the public after the end of the period of 50 years from the end of the calendar year in which copies of it were first issued to the public in electronic form.
- (6) Nothing in this section affects any liability under section 23 (secondary infringement) in respect of the rental of infringing copies.

**67 Playing of sound recordings for purposes of club, society, &c**

- (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 following conditions 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, and

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- (b) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation.

*Miscellaneous: broadcasts and cable programmes*

**68 Incidental recording for purposes of broadcast or cable programme**

- (1) This section applies where by virtue of a licence or assignment of copyright a person is authorised to broadcast or include in a cable programme service—
  - (a) a literary, dramatic or musical work, or an adaptation of such a work,
  - (b) an artistic work, or
  - (c) a sound recording or film.
- (2) He 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 or cable programme—
  - (a) in the case of a literary, dramatic or musical work, or an adaptation of such a work, to make a sound recording or film of the work or adaptation;
  - (b) in the case of an artistic work, to take a photograph or make a film of the work;
  - (c) in the case of a sound recording or film, to make a copy of it.
- (3) 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 or, as the case may be, including it in a cable programme service.
- (4) A recording, film, photograph or copy made in accordance with this section shall be treated as an infringing copy—
  - (a) for the purposes of any use in breach of the condition mentioned in subsection (3)(a), and
  - (b) for all purposes after that condition or the condition mentioned in subsection (3)(b) is broken.

**69 Recording for purposes of supervision and control of broadcasts and cable programmes**

- (1) Copyright is not infringed by the making or use by the British Broadcasting Corporation, for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.
- (2) Copyright is not infringed by—
  - (a) the making or use of recordings by the Independent Broadcasting Authority for the purposes mentioned in section 4(7) of the Broadcasting Act 1981 (maintenance of supervision and control over programmes and advertisements); or
  - (b) anything done under or in pursuance of provision included in a contract between a programme contractor and the Authority in accordance with section 21 of that Act.
- (3) Copyright is not infringed by—

- (a) the making by or with the authority of the Cable Authority, or the use by that Authority, for the purpose of maintaining supervision and control over programmes included in services licensed under Part I of the Cable and Broadcasting Act 1984, of recordings of those programmes; or
- (b) anything done under or in pursuance of—
  - (i) a notice or direction given under section 16 of the Cable and Broadcasting Act 1984 (power of Cable Authority to require production of recordings); or
  - (ii) a condition included in a licence by virtue of section 35 of that Act (duty of Authority to secure that recordings are available for certain purposes).

## **70 Recording for purposes of time-shifting**

The making for private and domestic use of a recording of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or cable programme or in any work included in it.

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

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

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

- (1) The showing or playing in public of a broadcast or cable programme to an audience who have not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any copyright in—
  - (a) the broadcast or cable programme, or
  - (b) any sound recording or film included in it.
- (2) The audience shall be treated as having paid for admission to a place—
  - (a) if they have paid for admission to a place of which that place forms part; or
  - (b) if goods or services are supplied at that place (or a place of which it forms part)—
    - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme, or
    - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.
- (3) The following shall not be regarded as having paid for admission to a place—
  - (a) persons admitted as residents or inmates of the place;
  - (b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to the main purposes of the club or society.

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

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

- (1) This section applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.
- (2) The copyright in the broadcast is not infringed—
- (a) if the inclusion is in pursuance of a requirement imposed under section 13(1) of the Cable and Broadcasting Act 1984 (duty of Cable Authority to secure inclusion in cable service of certain programmes), or
  - (b) if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided and is not a satellite transmission or an encrypted transmission.
- (3) The copyright in any work included in the broadcast is not infringed—
- (a) if the inclusion is in pursuance of a requirement imposed under section 13(1) of the Cable and Broadcasting Act 1984 (duty of Cable Authority to secure inclusion in cable service of certain programmes), or
  - (b) if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided;
- but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.

### **74 Provision of sub-titled copies of broadcast or cable programme**

- (1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them.
- (2) A “designated body” means a body designated for the purposes of this section by order of the Secretary of State, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.
- (3) 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.
- (4) 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 143 providing for the grant of licences.

### **75 Recording for archival purposes**

- (1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by

a designated body without thereby infringing any copyright in the broadcast or cable programme or in any work included in it.

- (2) In subsection (1) “designated” means designated for the purposes of this section by order of the Secretary of State, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.
- (3) 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.

### *Adaptations*

## **76 Adaptations**

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

## **CHAPTER IV**

### **MORAL RIGHTS**

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

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

- (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, 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 78.
- (2) The author of a literary work (other than words intended to be sung or spoken with music) or a dramatic work has the right to be identified whenever—
  - (a) the work is published commercially, performed in public, broadcast or included in a cable programme service; or
  - (b) copies of a film or sound recording including the work are issued to the public; and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.
- (3) The author of a musical work, or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified whenever—
  - (a) the work is published commercially;
  - (b) copies of a sound recording of the work are issued to the public; or
  - (c) a film of which the sound-track includes the work is shown in public or copies of such a film are issued to the public; and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.
- (4) The author of an artistic work has the right to be identified whenever—

- (a) the work is published commercially or exhibited in public, or a visual image of it is broadcast or included in a cable programme service;
  - (b) a film including a visual image of the work is shown in public or copies of such a film are issued to the public; or
  - (c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it, or of a photograph of it, are issued to the public.
- (5) The author of a work of architecture in the form of a building also has the right to be identified on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed.
- (6) The director of a film has the right to be identified whenever the film is shown in public, broadcast or included in a cable programme service or copies of the film are issued to the public.
- (7) The right of the author or director under this section is—
  - (a) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy,
  - (b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building, and
  - (c) in any other case, to be identified in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, exhibition, showing, broadcast or cable programme 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; otherwise any reasonable form of identification may be used.
- (9) This section has effect subject to section 79 (exceptions to right).

## **78 Requirement that right be asserted**

- (1) A person does not infringe the right conferred by section 77 (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 statement that the author or director asserts in relation to that work his right to be identified, or
  - (b) by instrument in writing signed by the author or director.
- (3) The right may also be asserted in relation to the public exhibition of an artistic work—
  - (a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached, or



- (b) by including in a licence by which the author or other first owner of copyright 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.

## 79 Exceptions to right

- (1) The right conferred by section 77 (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;
  - (c) any computer-generated work.
- (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—
  - (a) in the author's employer by virtue of section 11(2) (works produced in course of employment), or
  - (b) in the director's employer by virtue of section 9(2)(a) (person to be treated as author of film).
- (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 30 (fair dealing for certain purposes), so far as it relates to the reporting of current events by means of a sound recording, film, broadcast or cable programme;
  - (b) section 31 (incidental inclusion of work in an artistic work, sound recording, film, broadcast or cable programme);
  - (c) section 32(3) (examination questions);
  - (d) section 45 (parliamentary and judicial proceedings);
  - (e) section 46(1) or (2) (Royal Commissions and statutory inquiries);
  - (f) section 51 (use of design documents and models);
  - (g) section 52 (effect of exploitation of design derived from artistic work);

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*Status: This is the original version (as it was originally enacted).*

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- (h) section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author).
- (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 such publication or made available with the consent of the author for the purposes of such publication.
- (7) The right does not apply in relation to—
  - (a) a work in which Crown copyright or Parliamentary copyright subsists, or
  - (b) a work in which copyright originally vested in an international organisation by virtue of section 168,
 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*

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

- (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right in the circumstances mentioned in this section not to have his work subjected to derogatory treatment.
- (2) For the purposes of this section—
  - (a) “treatment” of a work means any addition to, deletion from or alteration to or adaptation of the work, other than—
    - (i) a translation of a literary or dramatic work, or
    - (ii) an arrangement or transcription of a musical work involving no more than a change of key or register; and
  - (b) the treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director;
 and in the following 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, broadcasts or includes in a cable programme service a derogatory treatment of the work; or
  - (b) issues to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.
- (4) In the case of an artistic work the right is infringed by a person who—
  - (a) publishes commercially or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme service a visual image of a derogatory treatment of the work,

- (b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of such a film, or
- (c) in the case of—
  - (i) a work of architecture in the form of a model for a building,
  - (ii) a sculpture, or
  - (iii) a work of artistic craftsmanship,
 issues to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.
- (5) Subsection (4) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment he has the right to require the identification to be removed.
- (6) In the case of a film, the right is infringed by a person who—
  - (a) shows in public, broadcasts or includes in a cable programme service a derogatory treatment of the film; or
  - (b) issues to the public copies of a derogatory treatment of the film,
 or who, along with the film, plays in public, broadcasts or includes in a cable programme service, or issues to the public copies of, a derogatory treatment of the film sound-track.
- (7) The right conferred by this section extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.
- (8) This section has effect subject to sections 81 and 82 (exceptions to and qualifications of right).

## **81 Exceptions to right**

- (1) The right conferred by section 80 (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 such 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 such a work without any modification of the published version.
- (5) The right is not infringed by an act which by virtue of section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author) 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,

provided, 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, that there is a sufficient disclaimer.

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

(1) This section applies to—

- (a) works in which copyright originally vested in the author's employer by virtue of section 11(2) (works produced in course of employment) or in the director's employer by virtue of section 9(2)(a) (person to be treated as author of film),
- (b) works in which Crown copyright or Parliamentary copyright subsists, and
- (c) works in which copyright originally vested in an international organisation by virtue of section 168.

(2) The right conferred by section 80 (right to object to derogatory treatment of work) does not apply to anything done in relation to such a work by or with the authority of the copyright owner unless the author or director—

- (a) 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.

## **83 Infringement of right by possessing or dealing with infringing article**

(1) The right conferred by section 80 (right to object to derogatory treatment of work) is also infringed by a person who—

- (a) possesses in the course of a business, or
- (b) sells or lets for hire, or offers or exposes for sale or hire, or
- (c) in the course of a business exhibits in public or distributes, 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 80, 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*

## **84 False attribution of work**

(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, broadcasts it or includes it in a cable programme service as being the work of a person, or

(b) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service as being directed by a person,

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

(4) 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 such a 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***85 Right to privacy of certain photographs and films**

- (1) A person who for private and domestic purposes commissions the taking of a photograph or the making of a film 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 broadcast or included in a cable programme service;
 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 31 (incidental inclusion of work in an artistic work, film, broadcast or cable programme);
  - (b) section 45 (parliamentary and judicial proceedings);
  - (c) section 46 (Royal Commissions and statutory inquiries);
  - (d) section 50 (acts done under statutory authority);
  - (e) section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author).

*Supplementary***86 Duration of rights**

- (1) The rights conferred by section 77 (right to be identified as author or director), section 80 (right to object to derogatory treatment of work) and section 85 (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 84 (false attribution) continues to subsist until 20 years after a person's death.

**87 Consent and waiver of rights**

- (1) It is not an infringement of any of the rights conferred by this Chapter to do any act to which the person entitled to the right has consented.
- (2) Any of those rights may be waived 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 Chapter 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).

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

- (1) The right conferred by section 77 (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 must be asserted in accordance with section 78 by each joint author in relation to himself.
- (2) The right conferred by section 80 (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.
- (3) A waiver under section 87 of those rights by one joint author does not affect the rights of the other joint authors.
- (4) The right conferred by section 84 (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 such a false attribution infringes the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed.
- (5) The above provisions also apply (with any necessary adaptations) in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship.

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 85 (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 87 by one of them does not affect the rights of the others.

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

- (1) The rights conferred by section 77 (right to be identified as author or director) and section 85 (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 80 (right to object to derogatory treatment of work) and section 84 (false attribution) apply in relation to the whole or any part of a work.

## CHAPTER V

### DEALINGS WITH RIGHTS IN COPYRIGHT WORKS

#### *Copyright*

#### **90 Assignment and licences**

- (1) Copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.
- (2) An assignment or other transmission of copyright may be partial, that 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;
  - (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 such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

#### **91 Prospective ownership of copyright**

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

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

“prospective owner” shall be construed accordingly, and includes a person who is prospectively entitled to copyright by virtue of such an agreement as is mentioned in subsection (1).
- (3) A licence granted by a prospective owner of copyright is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.



## **92 Exclusive licences**

- (1) In this Part 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.

## **93 Copyright to pass under will with unpublished work**

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

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

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

### *Moral rights*

## **94 Moral rights not assignable**

The rights conferred by Chapter IV (moral rights) are not assignable.

## **95 Transmission of moral rights on death**

- (1) On the death of a person entitled to the right conferred by section 77 (right to identification of author or director), section 80 (right to object to derogatory treatment of work) or section 85 (right to privacy of certain photographs and films)—
  - (a) the right passes to such person as he may by testamentary disposition specifically direct,
  - (b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes, and
  - (c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.
- (2) Where copyright forming part of a person’s estate passes in part to one person and in part to another, 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 77 (right to identification of author or director), be asserted by any of them;
  - (b) it is, in the case of the right conferred by section 80 (right to object to derogatory treatment of work) or section 85 (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 87 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 84 (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.

## CHAPTER VI

### REMEDIES FOR INFRINGEMENT

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

#### **96      Infringement actionable by copyright owner**

- (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 Chapter.

#### **97      Provisions as to damages in infringement action**

- (1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that 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 such additional damages as the justice of the case may require.

#### **98      Undertaking to take licence of right in infringement proceedings**

- (1) If in proceedings for infringement of copyright in respect of which a licence is available as of right under section 144 (powers exercisable in consequence of report

of Monopolies and Mergers Commission) the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Copyright Tribunal under that section—

- (a) no injunction shall be granted against him,
  - (b) no order for delivery up shall be made under section 99, and
  - (c) the amount recoverable against him by way of damages or on an account of profits shall not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement.
- (2) An undertaking may be given at any time before final order in the proceedings, without any admission of liability.
- (3) Nothing in this section affects the remedies available in respect of an infringement committed before licences of right were available.

## **99 Order for delivery up**

- (1) Where a person—
- (a) has an infringing copy of a work in his possession, custody or control in the course of a business, or
  - (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it has been or is to be used to make infringing copies,
- the owner of the copyright in the work may apply to the court for an order that the infringing copy or article be delivered up to him or to such other person as the court may direct.
- (2) An application shall not be made after the end of the period specified in section 113 (period after which remedy of delivery up not available); and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 114 (order as to 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 114 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.

## **100 Right to seize infringing copies and other articles**

- (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 99, 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 114.

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

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- (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 order of the Secretary of State.
- (6) An order of the Secretary of State 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.

### *Rights and remedies of exclusive licensee*

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

- (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) His rights and remedies are concurrent with those of the copyright owner; and references in the relevant provisions of this Part 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.

#### **102 Exercise of concurrent rights**

- (1) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the copyright owner or, as the case may be, 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—  
  - (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 99 (order for delivery up) or exercising the right conferred by section 100 (right of seizure); and the court may on the application of the licensee make such order under section 99 or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right conferred by section 100, as it thinks fit having regard to the terms of the licence.

### *Remedies for infringement of moral rights*

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

- (1) An infringement of a right conferred by Chapter 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 80 (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 such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work.

### *Presumptions*

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

- (1) The following presumptions apply in proceedings brought by virtue of this Chapter 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 11(2), 163, 165 or 168 (works produced in course of employment, Crown copyright, Parliamentary copyright or copyright of certain 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—

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- (a) the work qualifies for copyright protection by virtue of section 155 (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.

## **105 Presumptions relevant to sound recordings and films**

- (1) In proceedings brought by virtue of this Chapter with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating—

- (a) that a named person was the owner of copyright in the recording at the date of issue of the copies, or
- (b) that the recording was first published in a 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 Chapter with respect to a film, where copies of the film as issued to the public bear a statement—

- (a) that a named person was the author or director of the film,
- (b) that a named person was the owner of copyright in the film at the date of issue of the copies, or
- (c) that the film was first published in a 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 Chapter 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 Chapter with respect to a film, where the film as shown in public, broadcast or included in a cable programme service bears a statement—

- (a) that a named person was the author or director of the film, or

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- (b) that a named person was the owner of copyright in the film immediately after it was made,

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

This presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast or included in a cable programme service.

## **106 Presumptions relevant to works subject to Crown copyright**

In proceedings brought by virtue of this Chapter with respect to a literary, dramatic or musical work in which Crown 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*

## **107 Criminal liability for making or dealing with infringing articles, &c**

- (1) A person commits an offence who, without the licence of the copyright owner—
  - (a) makes for sale or hire, or
  - (b) imports into the United Kingdom otherwise than for his private and domestic use, or
  - (c) possesses in the course of a business with a view to committing any act infringing the copyright, or
  - (d) in the course of a business —
    - (i) sells or lets for hire, or
    - (ii) offers or exposes for sale or hire, or
    - (iii) exhibits in public, or
    - (iv) distributes, or
  - (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.
- (2) A person commits an offence who—
  - (a) makes an article specifically designed or adapted for making copies of a particular copyright work, or
  - (b) has such an article in his possession,knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.
- (3) Where copyright is infringed (otherwise than by reception of a broadcast or cable programme)—
  - (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.

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- (4) 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 the statutory maximum, or both;
  - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.
- (5) 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 standard scale, or both.
- (6) Sections 104 to 106 (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 108 below.

## **108 Order for delivery up in criminal proceedings**

- (1) The court before which proceedings are brought against a person for an offence under section 107 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 it had been or was to be used to make infringing copies,
 order that the infringing copy or article be delivered up to the copyright owner or to such other person as the court may direct.
- (2) For this purpose a person shall be treated as charged with an offence—
  - (a) in England, Wales and Northern Ireland, when he is orally charged or is served with a summons or indictment;
  - (b) in Scotland, when he is cautioned, charged or served with a complaint or indictment.
- (3) An order may be made by the court of its own motion or on the application of the prosecutor (or, in Scotland, the Lord Advocate or procurator-fiscal), 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 113 (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 114 (order as to disposal of infringing copy or other article).
- (4) An appeal lies from an order made under this section by a magistrates' court—
  - (a) in England and Wales, to the Crown Court, and
  - (b) in Northern Ireland, to the county court;
 and in Scotland, where an order has been made under this section, the person from whose possession, custody or control the infringing copy or article has been removed may, without prejudice to any other form of appeal under any rule of law, appeal against that order in the same manner as against sentence.
- (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 114.



- (6) Nothing in this section affects the powers of the court under section 43 of the Powers of Criminal Courts Act 1973, section 223 or 436 of the Criminal Procedure (Scotland) Act 1975 or Article 7 of the Criminal Justice (Northern Ireland) Order 1980 (general provisions as to forfeiture in criminal proceedings).

## **109 Search warrants**

- (1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing—
- (a) that an offence under section 107(1)(a), (b), (d)(iv) or (e) has been or is about to be committed in any premises, and
  - (b) that evidence that such an offence has been or is about to be committed is in those premises,
- he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.
- (2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in section 9(2) of the Police and Criminal Evidence Act 1984 (certain classes of personal or confidential material).
- (3) A warrant under this section—
- (a) may authorise persons to accompany any constable executing the warrant, and
  - (b) remains in force for 28 days from the date of its issue.
- (4) In executing a warrant issued under this section a constable may seize an article if he reasonably believes that it is evidence that any offence under section 107(1) has been or is about to be committed.
- (5) In this section “premises” includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft.

## **110 Offence by body corporate: liability of officers**

- (1) Where an offence under section 107 committed by a body corporate is proved to have been committed with the consent or connivance 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 liable to be proceeded against and punished accordingly.
- (2) In relation to a body corporate whose affairs are managed by its members “director” means a member of the body corporate.

### *Provision for preventing importation of infringing copies*

## **111 Infringing copies may be treated as prohibited goods**

- (1) The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to the Commissioners of Customs and Excise—
- (a) that he is the owner of the copyright in the work, and
  - (b) that he requests the Commissioners, for a period specified in the notice, to treat as prohibited goods printed copies of the work which are infringing copies.

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- (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 Commissioners 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 United Kingdom at a time and a place specified in the notice, and
  - (c) that he requests the Commissioners to treat the copies as prohibited goods.
- (4) 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 prohibited; but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.

## **112 Power of Commissioners of Customs and Excise to make regulations**

- (1) The Commissioners of Customs and Excise may make regulations prescribing the form in which notice is to be given under section 111 and requiring a person giving notice—
  - (a) to furnish the Commissioners with such evidence as may be specified in the regulations, either on giving notice or when the goods are imported, or at both those times, and
  - (b) to comply with such other conditions as may be specified in the regulations.
- (2) The regulations may, in particular, require a person giving such a notice—
  - (a) to pay such fees in respect of the notice as may be specified by the regulations;
  - (b) to give such security as may be so specified in respect of any liability or expense which the Commissioners 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 Commissioners against any such 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 Commissioners consider expedient.
- (4) Regulations 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.
- (5) Section 17 of the Customs and Excise Management Act 1979 (general provisions as to Commissioners' receipts) applies to fees paid in pursuance of regulations under this section as to receipts under the enactments relating to customs and excise.

### *Supplementary*

## **113 Period after which remedy of delivery up not available**

- (1) An application for an order under section 99 (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 any 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”—
  - (a) in England and Wales, has the same meaning as in the Limitation Act 1980;
  - (b) in Scotland, means legal disability within the meaning of the Prescription and Limitation (Scotland) Act 1973;
  - (c) in Northern Ireland, has the same meaning as in the Statute of Limitations (Northern Ireland) 1958.
- (4) An order under section 108 (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.

#### **114 Order as to disposal of infringing copy or other article**

- (1) An application may be made to the court for an order that an infringing copy or other article delivered up in pursuance of an order under section 99 or 108, or seized and detained in pursuance of the right conferred by section 100, shall be—
  - (a) forfeited to the copyright owner, or
  - (b) destroyed or otherwise dealt with as the court may think fit,or for a decision that no such order should be made.
- (2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interests.
- (3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the copy or other articles, and any such person is entitled—
  - (a) to appear in proceedings for an order under this section, whether or not he was served with notice, and
  - (b) to appeal against any order made, whether or not he appeared;and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.
- (4) Where there is more than one person interested in a copy or other article, the court shall make such order as it thinks just and may (in particular) direct that the article be sold, or otherwise dealt with, and the proceeds divided.
- (5) If the court decides that no order should be made under this section, the person in whose possession, custody or control the copy or other article was before being delivered up or seized is entitled to its return.
- (6) References in this 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 section 204 or 231 of this Act or section 58C of the Trade

Marks Act 1938 (which make similar provision in relation to infringement of rights in performances, design right and trade marks).

## **115 Jurisdiction of county court and sheriff court**

- (1) In England, Wales and Northern Ireland a county court may entertain proceedings under—
  - section 99 (order for delivery up of infringing copy or other article),
  - section 102(5) (order as to exercise of rights by copyright owner where exclusive licensee has concurrent rights), or
  - section 114 (order as to disposal of infringing copy or other article),
 where the value of the infringing copies and other articles in question does not exceed the county court limit for actions in tort.
- (2) In Scotland proceedings for an order under any of those provisions may be brought in the sheriff court.
- (3) Nothing in this section shall be construed as affecting the jurisdiction of the High Court or, in Scotland, the Court of Session.

## **CHAPTER VII**

### **COPYRIGHT LICENSING**

#### *Licensing schemes and licensing bodies*

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

- (1) In this Part 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 Chapter 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 Chapter to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only—
  - (a) a single collective work or collective works of which the authors are the same, or
  - (b) works made by, or by employees of or commissioned by, a single individual, firm, company or group of companies.

For this purpose a group of companies means a holding company and its subsidiaries, within the meaning of section 736 of the Companies Act 1985.

*References and applications with respect to licensing schemes*

**117 Licensing schemes to which ss. 118 to 123 apply**

Sections 118 to 123 (references and applications with respect to licensing schemes) apply to—

- (a) licensing schemes operated by licensing bodies in relation to the copyright in literary, dramatic, musical or artistic works or films (or film sound-tracks when accompanying a film) which cover works of more than one author, so far as they relate to licences for—
  - (i) copying the work,
  - (ii) performing, playing or showing the work in public, or
  - (iii) broadcasting the work or including it in a cable programme service;
- (b) all licensing schemes in relation to the copyright in sound recordings (other than film sound-tracks when accompanying a film), broadcasts or cable programmes, or the typographical arrangement of published editions; and
- (c) all licensing schemes in relation to the copyright in sound recordings, films or computer programs so far as they relate to licences for the rental of copies to the public;

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

**118 Reference of proposed licensing scheme to tribunal**

- (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

**119 Reference of licensing scheme to tribunal**

- (1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and—
  - (a) a person claiming that he requires a licence in a case of a description to which the scheme applies, or
  - (b) an organisation claiming to be representative of such persons,that person or organisation may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.
- (2) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

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

## **120 Further reference of scheme to tribunal**

- (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under section 118 or 119, or under this section, made an order with respect to the scheme, then, while the order remains in force—
  - (a) the operator of the scheme,
  - (b) a person claiming that he requires a licence in a case of the description to which the order applies, or
  - (c) an organisation claiming to be representative of such persons,may refer the scheme again to the Tribunal so far as it relates to cases of that description.
- (2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases—
  - (a) within twelve months from the date of the order on the previous reference, or
  - (b) if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order.
- (3) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.
- (4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

## **121 Application for grant of licence in connection with licensing scheme**

- (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal.
- (2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either—
  - (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted, or
  - (b) proposes terms for a licence which are unreasonable,may apply to the Copyright Tribunal.

- (3) A case shall be regarded as excluded from a licensing scheme for the purposes of subsection (2) if—
  - (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or
  - (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.
- (4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

## **122 Application for review of order as to entitlement to licence**

- (1) Where the Copyright Tribunal has made an order under section 121 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal—
  - (a) within twelve months from the date of the order, or of the decision on a previous application under this section, or
  - (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

## **123 Effect of order of tribunal as to licensing scheme**

- (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal—
  - (a) under section 118 (reference of terms of proposed scheme), or
  - (b) under section 119 or 120 (reference of existing scheme to Tribunal),shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.
- (2) While the order is in force a person who in a case of a class to which the order applies—
  - (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and
  - (b) complies with the other terms applicable to such a licence under the scheme,shall be in the same position as regards infringement of 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.

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- (3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

If such a direction is made—

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
- (b) the reference in 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.

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

- (4) An order of the Tribunal under section 119 or 120 made with respect to a scheme which is certified for any purpose under section 143 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 Tribunal.
- (5) Where the Tribunal has made an order under section 121 (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*

**124 Licences to which ss. 125 to 128 apply**

Sections 125 to 128 (references and applications with respect to licensing by licensing bodies) apply to the following descriptions of licence granted by a licensing body otherwise than in pursuance of a licensing scheme—

- (a) licences relating to the copyright in literary, dramatic, musical or artistic works or films (or film sound-tracks when accompanying a film) which cover works of more than one author, so far as they authorise—
  - (i) copying the work,
  - (ii) performing, playing or showing the work in public, or
  - (iii) broadcasting the work or including it in a cable programme service;
- (b) any licence relating to the copyright in a sound recording (other than a film sound-track when accompanying a film), broadcast or cable programme, or the typographical arrangement of a published edition; and
- (c) all licences in relation to the copyright in sound recordings, films or computer programs so far as they relate to the rental of copies to the public;

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



**125 Reference to tribunal of proposed licence**

- (1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

**126 Reference to tribunal of expiring licence**

- (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.
- (2) Such an application may not be made until the last three months before the licence is due to expire.
- (3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.
- (4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.
- (5) An order of the Tribunal under this section may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

**127 Application for review of order as to licence**

- (1) Where the Copyright Tribunal has made an order under section 125 or 126, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal—
  - (a) within twelve months from the date of the order or of the decision on a previous application under this section, or
  - (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

**128 Effect of order of tribunal as to licence**

- (1) Where the Copyright Tribunal has made an order under section 125 or 126 and the order remains in force, the person entitled to the benefit of the order shall if he—

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- (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 125, if assignment is not prohibited under the terms of the Tribunal's order; and
  - (b) in the case of an order under section 126, if assignment was not prohibited under the terms of the original licence.
- (3) The Tribunal may direct that an order under section 125 or 126, or an order under section 127 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

If such a direction is made—

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
- (b) the reference in 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.

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

## **129 General considerations: unreasonable discrimination**

In determining what is reasonable on a reference or application under this Chapter relating to a licensing scheme or licence, the Copyright Tribunal shall have regard to—

- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and
- (b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

## **130 Licences for reprographic copying**

Where a reference or application is made to the Copyright Tribunal under this Chapter relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, the Tribunal shall have regard to—

- (a) the extent to which published editions of the works in question are otherwise available,
- (b) the proportion of the work to be copied, and
- (c) the nature of the use to which the copies are likely to be put.

**131 Licences for educational establishments in respect of works included in broadcasts or cable programmes**

- (1) This section applies to references or applications under this Chapter relating to licences for the recording by or on behalf of educational establishments of broadcasts or cable programmes which include copyright works, or the making of copies of such recordings, for educational purposes.
- (2) The Copyright Tribunal shall, in considering what charges (if any) should be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

**132 Licences to reflect conditions imposed by promoters of events**

- (1) This section applies to references or applications under this Chapter in respect of licences relating to sound recordings, films, broadcasts or cable programmes which include, or are to include, any entertainment or other event.
- (2) The Copyright Tribunal shall have regard to any conditions imposed by the promoters of the entertainment or other event; and, in particular, the Tribunal shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.
- (3) Nothing in this section shall require the Tribunal to have regard to any such conditions in so far as they—
  - (a) purport to regulate the charges to be imposed in respect of the grant of licences, or
  - (b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film, broadcast or cable programme.

**133 Licences to reflect payments in respect of underlying rights**

- (1) In considering what charges should be paid for a licence—
  - (a) on a reference or application under this Chapter relating to licences for the rental to the public of copies of sound recordings, films or computer programs, or
  - (b) on an application under section 142 (settlement of royalty or other sum payable for deemed licence),

the Copyright Tribunal shall take into account any reasonable payments which the owner of the copyright in the sound recording, film or computer program 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 Chapter relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes, the Copyright Tribunal shall take into account, in considering what charges should be paid for a licence, any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance included in the recording, film, broadcast or cable programme.

**134 Licences in respect of works included in re-transmissions**

- (1) This section applies to references or applications under this Chapter relating to licences to include in a broadcast or cable programme service—
- (a) literary, dramatic, musical or artistic works, or,
  - (b) sound recordings or films,
- where one broadcast or cable programme (“the first transmission”) is, by reception and immediate re-transmission, to be further broadcast or included in a cable programme service (“the further transmission”).
- (2) So far as the further transmission is to the same area as the first transmission, the Copyright Tribunal shall, in considering what charges (if any) should be paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission which adequately remunerates him in respect of transmissions to that area.
- (3) So far as the further transmission is to an area outside that to which the first transmission was made, the Tribunal shall (except where subsection (4) applies) leave the further transmission out of account in considering what charges (if any) should be paid for licences for the first transmission.
- (4) If the Tribunal is satisfied that requirements imposed under section 13(1) of the Cable and Broadcasting Act 1984 (duty of Cable Authority to secure inclusion of certain broadcasts in cable programme services) will result in the further transmission being to areas part of which fall outside the area to which the first transmission is made, the Tribunal shall exercise its powers so as to secure that the charges payable for licences for the first transmission adequately reflect that fact.

**135 Mention of specific matters not to exclude other relevant considerations**

The mention in sections 129 to 134 of specific matters to which the Copyright Tribunal is to have regard in certain classes of case does not affect the Tribunal’s general obligation in any case to have regard to all relevant considerations.

*Implied indemnity in schemes or licences for reprographic copying*

**136 Implied indemnity in certain schemes and licences for reprographic copying**

- (1) This section applies to—
- (a) schemes for licensing reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, and
  - (b) licences granted by licensing bodies for such copying,
- where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.
- (2) There is implied—
- (a) in every scheme to which this section applies an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme, and
  - (b) in every licence to which this section applies an undertaking by the licensing body to indemnify the licensee,

against any liability incurred by him by reason of his having infringed copyright by making or authorising the making of reprographic copies of a work in circumstances within the apparent scope of his licence.

- (3) The circumstances of a case are within the apparent scope of a licence if—
- (a) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies; and
  - (b) the licence does not expressly provide that it does not extend to copyright of the description infringed.
- (4) In this section “liability” includes liability to pay costs; and this section applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against him for infringement of copyright as it applies to sums which he is liable to pay in respect of such infringement.
- (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*

### **137 Power to extend coverage of scheme or licence**

- (1) This section applies to—
- (a) a licensing scheme to which sections 118 to 123 apply (see section 117) and which is operated by a licensing body, or
  - (b) a licence to which sections 125 to 128 apply (see section 124),
- 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 purposes of instruction of reprographic copies of published literary, dramatic, musical or artistic works, or of the typographical arrangement of published editions.
- (2) If it appears to the Secretary of State with respect to a scheme or licence to which this section applies that—
- (a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it, and
  - (b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners,
- he may by order provide that the scheme or licence shall extend to those works.
- (3) Where he proposes to make such an order, the Secretary of State shall give notice of the proposal to—
- (a) the copyright owners,
  - (b) the licensing body in question, and
  - (c) such persons or organisations representative of educational establishments, and such other persons or organisations, as the Secretary of State thinks fit.

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- (4) The notice shall inform those persons of their right to make written or oral representations to the Secretary of State about the proposal within six months from the date of the notice; and if any of them wishes to make oral representations, the Secretary of State shall appoint a person to hear the representations and report to him.
- (5) In considering whether to make an order the Secretary of State shall take into account any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.

### **138 Variation or discharge of order extending scheme or licence**

- (1) The owner of the copyright in a work in respect of which an order is in force under section 137 may apply to the Secretary of State for the variation or discharge of the order, stating his reasons for making the application.
- (2) The Secretary of State shall not entertain an application made within two years of the making of the original order, or of the making of an order on a previous application under this section, unless it appears to him that the circumstances are exceptional.
- (3) On considering the reasons for the application the Secretary of State may confirm the order forthwith; if he does not do so, he shall give notice of the application to—
  - (a) the licensing body in question, and
  - (b) such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit.
- (4) The notice shall inform those persons of their right to make written or oral representations to the Secretary of State 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 Secretary of State shall appoint a person to hear the representations and report to him.
- (5) In considering the application the Secretary of State shall take into account the reasons for the application, any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.
- (6) The Secretary of State may make such order as he thinks fit confirming or discharging the order (or, as the case may be, the order as previously varied), or varying (or further varying) it so as to exclude works from it.

### **139 Appeals against orders**

- (1) The owner of the copyright in a work which is the subject of an order under section 137 (order extending coverage of scheme or licence) may appeal to the Copyright Tribunal which may confirm or discharge the order, or vary it so as to exclude works from it, as it thinks fit having regard to the considerations mentioned in subsection (2) of that section.
- (2) Where the Secretary of State has made an order under section 138 (order confirming, varying or discharging order extending coverage of scheme or licence)—
  - (a) the person who applied for the order, or
  - (b) any person or organisation representative of educational establishments who was given notice of the application for the order and made representations in accordance with subsection (4) of that section,

may appeal to the Tribunal which may confirm or discharge the order or make any other order which the Secretary of State might have made.

- (3) An appeal under this section shall be brought within six weeks of the making of the order or such further period as the Tribunal may allow.
- (4) An order under section 137 or 138 shall not come into effect until the end of the period of six weeks from the making of the order or, if an appeal is brought before the end of that period, until the appeal proceedings are disposed of or withdrawn.
- (5) If an appeal is brought after the end of that period, any decision of the Tribunal on the appeal does not affect the validity of anything done in reliance on the order appealed against before that decision takes effect.

#### **140 Inquiry whether new scheme or general licence required**

- (1) The Secretary of State 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 Secretary of State not to be covered by an existing licensing scheme or general licence and not to fall within the power conferred by section 137 (power to extend existing schemes and licences to similar works).
- (2) The procedure to be followed in relation to an inquiry shall be such as may be prescribed by regulations made by the Secretary of State.
- (3) The regulations shall, in particular, provide for notice to be given to—
  - (a) persons or organisations appearing to the Secretary of State to represent the owners of copyright in works of that description, and
  - (b) persons or organisations appearing to the Secretary of State to represent educational establishments,and for the making of written or oral representations by such persons; but without prejudice to the giving of notice to, and the making of representations by, other persons and organisations.
- (4) The person appointed to hold the inquiry shall not recommend the making of new provision unless he is satisfied—
  - (a) that it would be of advantage to educational establishments to be authorised to make reprographic copies of the works in question, and
  - (b) that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners.
- (5) If he does recommend the making of new provision he shall specify any terms, other than terms as to charges payable, on which authorisation under the new provision should be available.
- (6) Regulations 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.

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- (7) In this section (and section 141) a “general licence” means a licence granted by a licensing body which covers all works of the description to which it applies.

#### **141 Statutory licence where recommendation not implemented**

- (1) The Secretary of State may, within one year of the making of a recommendation under section 140 by order provide that if, or to the extent that, provision has not been made in accordance with the recommendation, the making by or on behalf of an educational establishment, for the purposes of instruction, of reprographic copies of the works to which the recommendation relates shall be treated as licensed by the owners of the copyright in the works.
- (2) For that purpose provision shall be regarded as having been made in accordance with the recommendation if—
  - (a) a certified licensing scheme has been established under which a licence is available to the establishment in question, or
  - (b) a general licence has been—
    - (i) granted to or for the benefit of that establishment, or
    - (ii) referred by or on behalf of that establishment to the Copyright Tribunal under section 125 (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 order shall also provide that any existing licence authorising the making of such copies (not being a licence granted under a certified licensing scheme or a general licence) shall cease to have effect to the extent that it is more restricted or more onerous than the licence provided for by the order.
- (4) The order shall provide for the licence to be free of royalty but, as respects other matters, subject to any terms specified in the recommendation and to such other terms as the Secretary of State may think fit.
- (5) The order may provide that where a copy which would otherwise be an infringing copy is made in accordance with the licence provided by the order but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing 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 order shall not come into force until at least six months after it is made.
- (7) An order 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) 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.
- (9) In this section a “certified licensing scheme” means a licensing scheme certified for the purposes of this section under section 143.



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

**142 Royalty or other sum payable for rental of sound recording, film or computer program**

- (1) An application to settle the royalty or other sum payable in pursuance of section 66 (rental of sound recordings, films and computer programs) may be made to the Copyright Tribunal by the copyright owner or the person claiming to be treated as licensed by him.
- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An application under subsection (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.
- (5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

*Certification of licensing schemes*

**143 Certification of licensing schemes**

- (1) A person operating or proposing to operate a licensing scheme may apply to the Secretary of State to certify the scheme for the purposes of—
  - (a) section 35 (educational recording of broadcasts or cable programmes),
  - (b) section 60 (abstracts of scientific or technical articles),
  - (c) section 66 (rental of sound recordings, films and computer programs),
  - (d) section 74 (sub-titled copies of broadcasts or cable programmes for people who are deaf or hard of hearing), or
  - (e) section 141 (reprographic copying of published works by educational establishments).
- (2) The Secretary of State shall by order made by statutory instrument certify the scheme if he is satisfied that it—
  - (a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences, and
  - (b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.
- (3) The scheme shall be scheduled to the order and the certification shall come into operation for the purposes of section 35, 60, 66, 74 or 141, as the case may be—
  - (a) on such date, not less than eight weeks after the order is made, as may be specified in the order, or
  - (b) if the scheme is the subject of a reference under section 118 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that section comes into force or the reference is withdrawn.

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- (4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Secretary of State shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under section 118, 119 or 120, and may do so in any other case if he thinks fit.
- (5) The order shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Secretary of State that it is no longer being operated according to its terms.

*Powers exercisable in consequence of competition report*

**144 Powers exercisable in consequence of report of Monopolies and Mergers Commission**

- (1) Where the matters specified in a report of the Monopolies and Mergers Commission as being those which in the Commission's opinion operate, may be expected to operate or have operated against the public interest include—
  - (a) conditions in licences granted by the owner of copyright in a work restricting the use of the work by the licensee or the right of the copyright owner to grant other licences, or
  - (b) a refusal of a copyright owner to grant licences on reasonable terms,
 the powers conferred by Part I of Schedule 8 to the Fair Trading Act 1973 (powers exercisable for purpose of remedying or preventing adverse effects specified in report of Commission) include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the copyright shall be available as of right.
- (2) The references in sections 56(2) and 73(2) of that Act, and sections 10(2)(b) and 12(5) of the Competition Act 1980, to the powers specified in that Part of that Schedule shall be construed accordingly.
- (3) A Minister shall only exercise the powers available by virtue of this section if he is satisfied that to do so does not contravene any Convention relating to copyright to which the United Kingdom is a party.
- (4) The terms of a licence available by virtue of this section shall, in default of agreement, be settled by the Copyright Tribunal on an application by the person requiring the licence; and terms so settled shall authorise the licensee to do everything in respect of which a licence is so available.
- (5) Where the terms of a licence are settled by the Tribunal, the licence has effect from the date on which the application to the Tribunal was made.

## CHAPTER VIII

### THE COPYRIGHT TRIBUNAL

#### *The Tribunal*

#### **145 The Copyright Tribunal**

- (1) The Tribunal established under section 23 of the Copyright Act 1956 is renamed the Copyright Tribunal.
- (2) The Tribunal shall consist of a chairman and two deputy chairmen appointed by the Lord Chancellor, after consultation with the Lord Advocate, and not less than two or more than eight ordinary members appointed by the Secretary of State.
- (3) A person is not eligible for appointment as chairman or deputy chairman unless he is a barrister, advocate or solicitor of not less than seven years' standing or has held judicial office.

#### **146 Membership of the Tribunal**

- (1) The members of the Copyright Tribunal shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.
- (2) A member of the Tribunal may resign his office by notice in writing to the Secretary of State or, in the case of the chairman or a deputy chairman, to the Lord Chancellor.
- (3) The Secretary of State or, in the case of the chairman or a deputy chairman, the Lord Chancellor may by notice in writing to the member concerned remove him from office if—
  - (a) he has become bankrupt or made an arrangement with his creditors or, in Scotland, his estate has been sequestrated or he has executed a trust deed for his creditors or entered into a composition contract, or
  - (b) he is incapacitated by physical or mental illness,or if he is in the opinion of the Secretary of State or, as the case may be, the Lord Chancellor otherwise unable or unfit to perform his duties as member.
- (4) If a member of the Tribunal is by reason of illness, absence or other reasonable cause for the time being unable to perform the duties of his office, either generally or in relation to particular proceedings, a person may be appointed to discharge his duties for a period not exceeding six months at one time or, as the case may be, in relation to those proceedings.
- (5) The appointment shall be made—
  - (a) in the case of the chairman or deputy chairman, by the Lord Chancellor, who shall appoint a person who would be eligible for appointment to that office, and
  - (b) in the case of an ordinary member, by the Secretary of State;and a person so appointed shall have during the period of his appointment, or in relation to the proceedings in question, the same powers as the person in whose place he is appointed.

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*Status: This is the original version (as it was originally enacted).*

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- (6) The Lord Chancellor shall consult the Lord Advocate before exercising his powers under this section.

#### **147 Financial provisions**

- (1) There shall be paid to the members of the Copyright Tribunal such remuneration (whether by way of salaries or fees), and such allowances, as the Secretary of State with the approval of the Treasury may determine.
- (2) The Secretary of State may appoint such staff for the Tribunal as, with the approval of the Treasury as to numbers and remuneration, he may determine.
- (3) The remuneration and allowances of members of the Tribunal, the remuneration of any staff and such other expenses of the Tribunal as the Secretary of State with the approval of the Treasury may determine shall be paid out of money provided by Parliament.

#### **148 Constitution for purposes of proceedings**

- (1) For the purposes of any proceedings the Copyright Tribunal shall consist of—
  - (a) a chairman, who shall be either the chairman or a deputy chairman of the Tribunal, and
  - (b) two or more ordinary members.
- (2) If the members of the Tribunal dealing with any matter are not unanimous, the decision shall be taken by majority vote; and if, in such a case, the votes are equal the chairman shall have a further, casting vote.
- (3) Where part of any proceedings before the Tribunal has been heard and one or more members of the Tribunal are unable to continue, the Tribunal shall remain duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than three.
- (4) If the chairman is unable to continue, the chairman of the Tribunal shall—
  - (a) appoint one of the remaining members to act as chairman, and
  - (b) appoint a suitably qualified person to attend the proceedings and advise the members on any questions of law arising.
- (5) A person is “suitably qualified” for the purposes of subsection (4)(b) if he is, or is eligible for appointment as, a deputy chairman of the Tribunal.

#### *Jurisdiction and procedure*

#### **149 Jurisdiction of the Tribunal**

The function of the Copyright Tribunal is to hear and determine proceedings under—

- (a) section 118, 119, or 120 (reference of licensing scheme);
- (b) section 121 or 122 (application with respect to entitlement to licence under licensing scheme);
- (c) section 125, 126 or 127 (reference or application with respect to licensing by licensing body);
- (d) section 139 (appeal against order as to coverage of licensing scheme or licence);

- (e) section 142 (application to settle royalty or other sum payable for rental of sound recording, film or computer program);
- (f) section 144(4) (application to settle terms of copyright licence available as of right);
- (g) section 190 (application to give consent for purposes of Part II on behalf of performer);
- (h) paragraph 5 of Schedule 6 (determination of royalty or other remuneration to be paid to trustees for the Hospital for Sick Children).

## **150 General power to make rules**

- (1) The Lord Chancellor may, after consultation with the Lord Advocate, make rules for regulating proceedings before the Copyright Tribunal and, subject to the approval of the Treasury, as to the fees chargeable in respect of such proceedings.
- (2) The rules may apply in relation to the Tribunal—
  - (a) as respects proceedings in England and Wales, any of the provisions of the Arbitration Act 1950;
  - (b) as respects proceedings in Northern Ireland, any of the provisions of the Arbitration Act (Northern Ireland) 1937;
 and any provisions so applied shall be set out in or scheduled to the rules.
- (3) Provision shall be made by the rules—
  - (a) prohibiting the Tribunal from entertaining a reference under section 118, 119 or 120 by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent;
  - (b) specifying the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any person or organisation satisfying the Tribunal that they have a substantial interest in the matter; and
  - (c) requiring the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.
- (4) The rules may make provision for regulating or prescribing any matters incidental to or consequential upon any appeal from the Tribunal under section 152 (appeal to the court on point of law).
- (5) Rules 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.

## **151 Costs, proof of orders, &c**

- (1) The Copyright Tribunal may order that the costs of a party to proceedings before it shall be paid by such other party as the Tribunal may direct; and the Tribunal may tax or settle the amount of the costs, or direct in what manner they are to be taxed.
- (2) A document purporting to be a copy of an order of the Tribunal and to be certified by the chairman to be a true copy shall, in any proceedings, be sufficient evidence of the order unless the contrary is proved.
- (3) As respect proceedings in Scotland, the Tribunal has the like powers for securing the attendance of witnesses and the production of documents, and with regard to the examination of witnesses on oath, as an arbiter under a submission.

### *Appeals*

#### **152 Appeal to the court on point of law**

- (1) An appeal lies on any point of law arising from a decision of the Copyright Tribunal to the High Court or, in the case of proceedings of the Tribunal in Scotland, to the Court of Session.
- (2) Provision shall be made by rules under section 150 limiting the time within which an appeal may be brought.
- (3) Provision may be made by rules under that section—
  - (a) for suspending, or authorising or requiring the Tribunal to suspend, the operation of orders of the Tribunal in cases where its decision is appealed against;
  - (b) for modifying in relation to an order of the Tribunal whose operation is suspended the operation of any provision of this Act as to the effect of the order;
  - (c) for the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the Tribunal will be informed of its suspension.

## **CHAPTER IX**

### **QUALIFICATION FOR AND EXTENT OF COPYRIGHT PROTECTION**

#### *Qualification for copyright protection*

#### **153 Qualification for copyright protection**

- (1) Copyright does not subsist in a work unless the qualification requirements of this Chapter are satisfied as regards—
  - (a) the author (see section 154), or
  - (b) the country in which the work was first published (see section 155), or
  - (c) in the case of a broadcast or cable programme, the country from which the broadcast was made or the cable programme was sent (see section 156).
- (2) Subsection (1) does not apply in relation to Crown copyright or Parliamentary copyright (see sections 163 to 166) or to copyright subsisting by virtue of section 168 (copyright of certain international organisations).
- (3) If the qualification requirements of this Chapter, or section 163, 165 or 168, are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

#### **154 Qualification by reference to author**

- (1) A work qualifies for copyright protection if the author was at the material time a qualifying person, that is—

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- (a) a British citizen, a British Dependent 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, or
  - (b) an individual domiciled or resident in the United Kingdom or another country to which the relevant provisions of this Part extend, or
  - (c) a body incorporated under the law of a part of the United Kingdom or of another country to which the relevant provisions of this Part extend.
- (2) Where, or so far as, provision is made by Order under section 159 (application of this Part to countries to which it does not extend), 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 Order relates.
- (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—
  - section 11(1) and (2) (first ownership of copyright; entitlement of author or author's employer),
  - section 12(1) and (2) (duration of copyright; dependent on life of author unless work of unknown authorship), and section 9(4) (meaning of “unknown authorship”) so far as it applies for the purposes of section 12(2), and
  - section 57 (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 as follows—
  - (a) in the case of a sound recording or film, when it was made;
  - (b) in the case of a broadcast, when the broadcast was made;
  - (c) in the case of a cable programme, when the programme was included in a cable programme service;
  - (d) in the case of the typographical arrangement of a published edition, when the edition was first published.

## **155 Qualification by reference to country of first publication**

- (1) A literary, dramatic, musical or artistic work, a sound recording or film, or the typographical arrangement of a published edition, qualifies for copyright protection if it is first published—
  - (a) in the United Kingdom, or
  - (b) in another country to which the relevant provisions of this Part extend.
- (2) Where, or so far as, provision is made by Order under section 159 (application of this Part to countries to which it does not extend), such a work also qualifies for copyright protection if it is first published in a country to which the Order relates.

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*Status: This is the original version (as it was originally enacted).*

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- (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 30 days shall be treated as simultaneous.

### **156 Qualification by reference to place of transmission**

- (1) A broadcast qualifies for copyright protection if it is made from, and a cable programme qualifies for copyright protection if it is sent from, a place in—
- (a) the United Kingdom, or
  - (b) another country to which the relevant provisions of this Part extend.
- (2) Where, or so far as, provision is made by Order under section 159 (application of this Part to countries to which it does not extend), a broadcast or cable programme also qualifies for copyright protection if it is made from or, as the case may be, sent from a place in a country to which the Order relates.

### *Extent and application of this Part*

### **157 Countries to which this Part extends**

- (1) This Part extends to England and Wales, Scotland and Northern Ireland.
- (2) Her Majesty may by Order in Council direct that this Part shall extend, subject to such exceptions and modifications as may be specified in the Order, to—
- (a) any of the Channel Islands,
  - (b) the Isle of Man, or
  - (c) any colony.
- (3) That power includes power to extend, subject to such exceptions and modifications as may be specified in the Order, any Order in Council made under the following provisions of this Chapter.
- (4) The legislature of a country to which this Part has been extended may modify or add to the provisions of this Part, in their operation as part of the law of that country, as the legislature may consider necessary to adapt the provisions to the circumstances of that country—
- (a) as regards procedure and remedies, or
  - (b) as regards works qualifying for copyright protection by virtue of a connection with that country.
- (5) Nothing in this section shall be construed as restricting the extent of paragraph 36 of Schedule 1 (transitional provisions: dependent territories where the Copyright Act 1956 or the Copyright Act 1911 remains in force) in relation to the law of a dependent territory to which this Part does not extend.

### **158 Countries ceasing to be colonies**

- (1) The following provisions apply where a country to which this Part has been extended ceases to be a colony of the United Kingdom.



- (2) As from the date on which it ceases to be a colony it shall cease to be regarded as a country to which this Part extends for the purposes of—
  - (a) section 160(2)(a) (denial of copyright protection to citizens of countries not giving adequate protection to British works), and
  - (b) sections 163 and 165 (Crown and Parliamentary copyright).
- (3) But it shall continue to be treated as a country to which this Part extends for the purposes of sections 154 to 156 (qualification for copyright protection) until—
  - (a) an Order in Council is made in respect of that country under section 159 (application of this Part to countries to which it does not extend), or
  - (b) an Order in Council is made declaring that it shall cease to be so treated by reason of the fact that the provisions of this Part as part of the law of that country have been repealed or amended.
- (4) A statutory instrument containing an Order in Council under subsection (3)(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **159 Application of this Part to countries to which it does not extend**

- (1) Her Majesty may by Order in Council make provision for applying in relation to a country to which this Part does not extend any of the provisions of this Part specified in the Order, so as to secure that those provisions—
  - (a) apply in relation to persons who are citizens or subjects of that country or are domiciled or resident there, as they apply to persons who are British citizens or are domiciled or resident in the United Kingdom, or
  - (b) apply in relation to bodies incorporated under the law of that country as they apply in relation to bodies incorporated under the law of a part of the United Kingdom, or
  - (c) apply in relation to works first published in that country as they apply in relation to works first published in the United Kingdom, or
  - (d) apply in relation to broadcasts made from or cable programmes sent from that country as they apply in relation to broadcasts made from or cable programmes sent from the United Kingdom.
- (2) An Order may make provision for all or any of the matters mentioned in subsection (1) and may—
  - (a) apply any provisions of this Part subject to such exceptions and modifications as are specified in the Order; and
  - (b) direct that any provisions of this Part apply either generally or in relation to such classes of works, or other classes of case, as are specified in the Order.
- (3) Except in the case of a Convention country or another member State of the European Economic Community, Her Majesty shall not make an Order in Council 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 Order relates, giving adequate protection to the owners of copyright under this Part.
- (4) In subsection (3) “Convention country” means a country which is a party to a Convention relating to copyright to which the United Kingdom is also a party.
- (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.

**160 Denial of copyright protection to citizens of countries not giving adequate protection to British works**

- (1) If it appears to Her Majesty that the law of a country fails to give adequate protection to British works to which this section applies, or to one or more classes of such works, Her Majesty may make provision by Order in Council in accordance with this section restricting the rights conferred by this Part in relation to works of authors connected with that country.
- (2) An Order in Council under this section shall designate the country concerned and provide that, for the purposes specified in the Order, works first published after a date specified in the Order shall not be treated as qualifying for copyright protection by virtue of such publication if at that time the authors are—
  - (a) citizens or subjects of that country (not domiciled or resident in the United Kingdom or another country to which the relevant provisions of this Part extend), or
  - (b) bodies incorporated under the law of that country;
 and the Order may make such provision for all the purposes of this Part or for such purposes as are specified in the Order, and either generally or in relation to such class of cases as are specified in the Order, having regard to the nature and extent of that failure referred to in subsection (1).
- (3) This section applies to literary, dramatic, musical and artistic works, sound recordings and films; and “British works” means works of which the author was a qualifying person at the material time within the meaning of section 154.
- (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.

*Supplementary***161 Territorial waters and the continental shelf**

- (1) For the purposes of this Part the territorial waters of the United Kingdom shall be treated as part of the United Kingdom.
- (2) This Part applies to things done in the United Kingdom sector of the continental shelf on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as it applies to things done in the United Kingdom.
- (3) The United Kingdom sector of the continental shelf means the areas designated by order under section 1(7) of the Continental Shelf Act 1964.

**162 British ships, aircraft and hovercraft**

- (1) This Part applies to things done on a British ship, aircraft or hovercraft as it applies to things done in the United Kingdom.
- (2) In this section—
 

“British ship” means a ship which is a British ship for the purposes of the Merchant Shipping Acts (see section 2 of the Merchant Shipping Act 1988) otherwise than by virtue of registration in a country outside the United Kingdom; and

“British aircraft” and “British hovercraft” mean an aircraft or hovercraft registered in the United Kingdom.

## 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.
- (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 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,
    - (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—

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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;

“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);

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“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)—

account of profits and accounts (in Scotland)	section 177
acts restricted by copyright	section 16(1)
adaptation	section 21(3)
archivist (in sections 37 to 43)	section 37(6)
article (in a periodical)	section 178
artistic work	section 4(1)
assignment (in Scotland)	section 177
author	sections 9 and 10(3)
broadcast (and related expressions)	section 6
building	section 4(2)
business	section 178
cable programme, cable programme service (and related expressions)	section 7
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commencement (in Schedule 1)	paragraph 1(2) of that Schedule
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copyright (in Schedule 1)	paragraph 2(2) of that Schedule
copyright owner	section 101(2) and 173
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defendant (in Scotland)	section 177
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electronic and electronic form	section 178
employed, employee, employer and employment	section 178
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facsimile copy	section 178
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the 1956 Act (in Schedule 1)	paragraph 1(1) of that Schedule

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on behalf of (in relation to an educational establishment)	section 174(5)
Parliamentary copyright	sections 165(2) and (7) and 166(6)
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prescribed conditions (in sections 38 to 43)	section 37(1)(b)
prescribed library or archive (in sections 38 to 43)	section 37(1)(a)
programme (in the context of broadcasting)	section 6(3)
prospective owner (of copyright)	section 91(2)
publication and related expressions	section 175
published edition (in the context of copyright in the typographical arrangement)	section 8
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rental	section 178
reprographic copies and reprographic copying	section 178
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unauthorised (as regards things done in relation to a work)	section 178
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wireless telegraphy	section 178
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work of more than one author (in Chapter section 116(4)  
VII)

writing and written section 178