Changes to Legislation: as of 13 October 2026, this Act is up to date with all changes known to be in force.

Number 28 *of* 2000

COPYRIGHT AND RELATED RIGHTS ACT 2000

REVISED

Updated to 9 September 2026

This Revised Act is an administrative consolidation of the *Copyright and Related Rights Act 2000*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Development (Strategic Gas Reserve) Act 2026* (36/2026), enacted 23 July 2026, and all statutory instruments up to and including the *European Union (Copyright and Related Rights in the Digital Single Market) (Amendment) Regulations 2026* (S.I. No. 469 of 2026), made 9 September 2026, were considered in the preparation of this Revised Act.

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COPYRIGHT AND RELATED RIGHTS ACT 2000

REVISED

Updated to 9 September 2026

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COPYRIGHT AND RELATED RIGHTS ACT 2000

REVISED

Updated to 9 September 2026

AN ACT TO MAKE PROVISION IN RESPECT OF COPYRIGHT, PROTECTION OF RIGHTS OF PERFORMERS AND RIGHTS IN PERFORMANCES, TO MAKE PROVISION FOR LICENSING SCHEMES AND REGISTRATION SCHEMES FOR COPYRIGHT AND RELATED RIGHTS; TO RESTATE THE LAW IN RESPECT OF COUNCIL DIRECTIVE NO. 91/250/EEC OF 14 MAY 1991[1] ON THE LEGAL PROTECTION OF COMPUTER PROGRAMS; TO GIVE EFFECT TO COUNCIL DIRECTIVE NO. 92/100/EEC OF 19 NOVEMBER 1992[2] ON RENTAL RIGHT AND LENDING RIGHT AND ON CERTAIN RIGHTS RELATING TO COPYRIGHT IN THE FIELD OF INTELLECTUAL PROPERTY; TO GIVE EFFECT TO COUNCIL DIRECTIVE NO. 93/83/EEC OF 27 SEPTEMBER 1993[3] ON THE CO-ORDINATION OF CERTAIN RULES CONCERNING COPYRIGHT AND RIGHTS RELATED TO COPYRIGHT APPLICABLE TO SATELLITE BROADCASTING AND CABLE RETRANSMISSION; TO RESTATE THE LAW IN RESPECT OF COUNCIL DIRECTIVE NO. 93/98/EEC OF 29 OCTOBER 1993[4] HARMONISING THE TERM OF PROTECTION OF COPYRIGHT AND CERTAIN RELATED RIGHTS AND TO GIVE EFFECT TO ARTICLE 2.1 THEREOF; TO GIVE EFFECT TO DIRECTIVE NO. 96/9/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 11 MARCH 1996[5] ON THE LEGAL PROTECTION OF DATABASES; AND TO PROVIDE FOR RELATED MATTERS. [10*th July*, 2000]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

Short title and commencement.

1.—(1) This Act may be cited as the Copyright and Related Rights Act, 2000.

(2) This Act shall come into operation on such day or days as the Minister may be order or orders either generally or with reference to any particular purpose appoint, and different days may be so appointed for different purposes or different provisions of this Act.

(3) An order under *subsection (2)* may, in respect of the repeals or revocations effected by *section 10* of the enactments mentioned in the *Second Schedule*, fix different days for the repeal or revocation of different enactments or for the repeal or revocation for different purposes of any enactment.

[1] O.J. No. L.122, 17/5/1991, p. 42
[2] O.J. No. L.346, 27/11/1992, p. 61
[3] O.J. No. L.290, 24/11/1993, p. 9
[4] O.J. No. L.248, 6/10/1993, p. 13
[5] O.J. No. L.077, 27/3/1996, p. 20

Interpretation.

2.—(1) In this Act, unless the context otherwise requires—

"Act of 1927" means the Industrial and Commercial Property (Protection) Act, 1927;

"anonymous work" means a work where the identity of the author is unknown or, in the case of a work of joint authorship, where the identity of the authors is unknown;

"appropriate court" means—

(*a*) the District Court, where the damages or the value of the other relief sought in any action to which the application relates is not liable to exceed such sum as stands specified by an enactment to be the jurisdiction of the District Court for actions in contract or tort,

(*b*) the Circuit Court, where the damages or the value of the other relief sought in any action to which the application relates is not liable to exceed such sum as stands specified by an enactment to be the jurisdiction of the Circuit Court for actions in contract or tort, and

(*c*) in any other case, the High Court;

"artistic work" includes a work of any of the following descriptions, irrespective of their artistic quality—

(*a*) photographs, paintings, drawings, diagrams, maps, charts, plans, engravings, etchings, lithographs, woodcuts, prints or similar works, collages or sculptures (including any cast or model made for the purposes of a sculpture),

(*b*) works of architecture, being either buildings or models for buildings, and

(*c*) works of artistic craftsmanship;

"author" has the meaning assigned to it by *section 21*;

"authorised broadcaster" means Radio Telefís Éireann, Seirbhísí Theilifís na Gaeilge Teoranta or a person with whom the Independent Radio and Television Commission has entered into a contract for the provision of broadcasting services under the Radio and Television Act, 1988, and is licensed under that Act to provide those services;

"authorised cable programme service provider" means the provider of any cable programme service other than a cable programme service provided unlawfully;

F1**[**"broadcast" means an electronic transmission of sounds, images or data, or any combination or representation thereof, for direct public reception or for presentation to members of the public;**]**

F2**[**"broadcasting organisation" means—

(*a*) in the State, an authorised broadcaster, or

(*b*) in another Member State, a broadcasting organisation for the purposes of Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019[1];**]**

"building" includes any structure;

"cable programme" means any item included in a cable programme service;

"cable programme service" means a service, F3**[**including MMDS and digital terrestrial retransmission**]**, which consists wholly or mainly of sending sounds, images or data or any combination of sounds, images or data, or the representations thereof, by means of a telecommunications system—

(*a*) for reception at 2 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,

[1] OJ No. L130, 17.5.2019, p.82.

but shall not include:

(i) a service or part of a service of which it is an essential feature that while sounds, images or data or any combination of sounds, images or data, or the representations thereof, are being conveyed by the person providing the service, there 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, data (other than signals sent for the operation or control of the service) for reception by the person providing the service or other persons receiving the service;

(ii) a service operated for the purposes of a business, trade or profession where—

(I) no person except that person carrying on the business, trade or profession is concerned in the control of the apparatus comprised in the system,

(II) sounds, images or data or any combination of sounds, images or data, or the representations thereof, are conveyed by the system exclusively for the purposes of the internal management of that business, trade or profession and not for the purpose of rendering a service or providing amenities for others, and

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

(iii) a service operated by an individual where—

(I) all the apparatus comprised in the system is under his or her control,

(II) sounds, images or data or any combination of sounds, images or data, or the representations thereof, conveyed by the system are conveyed solely for his or her private and domestic use by that individual, and

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

(iv) services, other than services operated as part of the amenities provided for residents or occupants of premises operated as a business, trade or profession, 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;

(v) services which are, or to the extent that they are, operated for persons providing broadcasting or cable programme service or providing programmes for such services;

F4**[**"collective management organisation" has the same meaning as it has in the European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016 (SI. No. 156 of 2016);**]**

"computer-generated", in relation to a work, means that the work is generated by computer in circumstances where the author of the work is not an individual;

"computer program" means a program which is original in that it is the author's own intellectual creation and includes any design materials used for the preparation of the program;

F1**[**"Controller" means the Controller of Intellectual Property;**]**

"copyright work" means a work in which copyright subsists;

F4**[**"cultural heritage institution" has the meaning assigned to it in the European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021 (S.I. No. 567 of 2021);**]**

"database" means a collection of independent works, data or other materials, arranged in a systematic or methodical way and individually accessible by any means but excludes computer programs used in the making or operation of a database;

F5**[**"digital terrestrial retransmission" means the reception and immediate retransmission on an encrypted basis without alteration by means of a multiplex of a broadcast or a cable programme initially transmitted from another Member State of the EEA;**]**

F1**[**"disability" has the meaning assigned to it in section 2 of the Disability Act 2005;**]**

"dramatic work" includes a choreographic work or a work of mime;

F6**[**"education" means instruction, lectures, study, research, teaching or training either in an educational establishment or by any person acting under the authority of an educational establishment, and includes all activities necessary or expedient or ancillary to such a programme, and "educational purposes" shall be construed accordingly;**]**

"educational establishment" means—

(*a*) any school,

(*b*) any university to which the Universities Act, 1997, F1**[**applies,**]**

F6**[**(*ba*) any relevant provider within the meaning of section 2 of the Qualifications and Quality Assurance (Education and Training) Act 2012, and**]**

(*c*) any other educational establishment prescribed by the Minister under *section 55*;

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993 and as amended from time to time;

F6**[**"electronic transmission" means a specified transmission through the Internet, a transmission by wireless means and a transmission prescribed for the purposes of this definition, but does not include—

(*a*) a transmission by means of MMDS, or

(*b*) a digital terrestrial retransmission;**]**

"enactment" means an Act of the Oireachtas or an instrument made thereunder;

F6**[**"excluded data information", means—

(*a*) a computer program (whether in whole or in part), or

(*b*) a program source code of a website;**]**

"film" means a fixation on any medium from which a moving image may, by any means, be produced, perceived or communicated through a device;

"fixation" means the embodiment of sounds or images or any combination of sounds or images, or the representations thereof, from which they can be perceived, reproduced or communicated through a device;

"general licence" means a licence granted by a licensing body that includes all works of the description to which it applies;

F6**[**"intellectual property claim" means—

(*a*) any proceedings instituted, application or reference made, or appeal lodged, under the Patents Act 1992 other than an application under section 47, 49, 50, 51, 52, 53, 54, 57, 59, 74, 86, 91, 96, 108, 123 or 124 of that Act,

(*b*) any proceedings instituted, application or reference made, or appeal lodged, under the Trade Marks Act 1996 other than an application under section 25, 51, 52, 57, 65, 67, 72, 77, 78, 79, 85(5), 88 or 97 of that Act, or under paragraph 14(3) of the Second Schedule to that Act in so far as that paragraph relates to an application under section 51 of that Act,

(*c*) any proceedings instituted, application or reference made, or appeal lodged, under this Act other than an application under section 133, 143, 170, 256, 257, 261, 299B, 366 or 367, or

(*d*) any proceedings instituted, application or reference made, or appeal lodged, under the Industrial Designs Act 2001 other than an application under section 33, 34, 35, 62, 70, 81, 84 or 86 of that Act;**]**

"judicial proceeding" includes proceedings before any court or tribunal which has power to hear, receive and examine evidence on oath or otherwise and has authority to decide any matter affecting the legal rights or liabilities of a person;

"licensing body" means a body referred to in *section 38*, *149*, *265* or *340*, as the case may be;

"literary work" means a work, including a computer program, but does not include a dramatic or musical work or an original database, which is written, spoken or sung;

"marketed" means sold, hired rented or lent, or offered or exposed for sale, hire, rental or loan, or otherwise distributed, and references to "marketing" shall be construed accordingly;

"Member State of the EEA" means a state which is a contracting state to the EEA Agreement;

"Minister" means the Minister for Enterprise, Trade and Employment;

"MMDS" means a Multipoint Microwave Distribution System;

F5**[**"multiplex" has the meaning assigned to it in section 129 of the Broadcasting Act 2009;**]**

"musical work" means a work consisting of music, but does not include any words, or action, intended to be sung, spoken or performed with the music;

"original database" means a database in any form which by reason of the selection or arrangement of its contents constitutes the original intellectual creation of the author;

F4**[**"out-of-commerce work" means a work where it can be presumed in good faith that the whole work or other subject matter is not available to the public through customary channels of commerce, after a reasonable effort has been made to determine whether it is available to the public;**]**

"parliamentary proceeding" includes proceedings of either or both of the Houses of the Oireachtas or committees established by either or both of the Houses of the Oireachtas or proceedings of the European Parliament or committees established by the European Parliament;

"photograph" means a recording of light, or any 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;

"premises" means any building or place, including any land, vehicle, vessel, moveable structure, trailer, hovercraft or aircraft;

"prescribe" means prescribe by regulations and cognate words shall be construed accordingly;

"producer", in relation to a film or sound recording, means the person by whom the arrangements necessary for the making of the film or sound recording, as the case may be, are undertaken;

"protection-defeating device" includes any device, function or product, or component incorporated into a device, function or product, the primary purpose or effect of which is to avoid, bypass, remove, deactivate or otherwise circumvent, without authority, any rights protection measure F7**[**or which is promoted, advertised or marketed for the purpose of circumvention of any rights protection measure, or

which has only a limited commercially significant purpose or use other than to circumvent any rights protection measure**]**;

"pseudonymous work" means a work where the pseudonym adopted by the author or, in the case of a work of joint authorship the authors, does not reveal the identity of the author or authors and the identity of the author or authors is unknown;

"published edition", in relation to the 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 or original databases;

"repeat broadcast" means a repeat of a broadcast which has been previously transmitted;

"repeat cable programme" means a repeat of a cable programme which has been previously included in a cable programme service;

"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;

F6**[**"rights identifying information", in relation to a work, means data information (other than excluded data information) about the work, including digital data (whether or not it is incorporated within the work or is otherwise associated with it) that provides information about—

(*a*) the authorship, condition, content, context, origin, ownership, provenance, quality or structure of the work,

(*b*) rights pertaining to or associated with the work, or

(*c*) matters similar to any matter which falls within *paragraph (a)* or *(b)*;**]**

"rights protection measure" means any process, treatment, mechanism or system which is designed to prevent or inhibit the unauthorised exercise of any of the rights conferred by this Act;

"sound recording" means a fixation of sounds, or of the representations thereof, from which the sounds are capable of being reproduced, regardless of the medium on which the recording is made, or the method by which the sounds are reproduced;

F6**[**"specified transmission through the Internet" means—

(*a*) a transmission taking place simultaneously through the Internet and by other means,

(*b*) a concurrent transmission of a live event, or

(*c*) a transmission of recorded moving images or sounds, or both, forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person;**]**

"statutory inquiry" means an inquiry held, or investigation conducted, pursuant to a duty imposed or power conferred by an enactment;

"statutory register" means a register maintained pursuant to a statutory requirement;

"statutory requirement" means a requirement imposed by an enactment;

"sufficient acknowledgement" has the meaning assigned to it by *section 51*;

"telecommunications system" means a system for conveying sounds, data or information or any combination of sounds, images or information, or the representations thereof, by means of a wire, beam or any other conducting device through

which electronically generated programme-carrying signals are guided over a distance;

"work" means a literary, dramatic, musical or artistic work, sound recording, film, broadcast, cable programme, typographical arrangement of a published edition or an original database and includes a computer program except in *Part II*, *Chapter 7* where "work" means "literary, dramatic, musical or artistic work or film";

"work of joint authorship" has the meaning assigned to it by *section 22*;

"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 references to "written" shall be construed accordingly.

(2) A reference in this Act to the reception of a broadcast shall include the reception of a broadcast relayed by means of a telecommunications system.

(3) A reference in this Act to a prescribed archive shall include references to a prescribed museum.

(4) A reference in this Act to an archive shall include references to a museum and a reference in this Act to an archivist shall include references to a curator.

(5) A reference in this Act to a librarian or archivist shall include references to a person acting on his or her behalf.

(6) A computer program used in the making or operation of databases shall not be regarded as a database.

(7) The author of a work shall be deemed to be known where it is possible for a person, without previous knowledge of the facts, to ascertain the identity of the author of the work by reasonable enquiry.

(8) The authors of a work of joint authorship shall be deemed to be known where it is possible for a person, without previous knowledge of the facts, to ascertain the identity of one or more of the authors of the work by reasonable enquiry.

(9) References in this Act to a permanent collection shall include a collection of works or sound recordings in the possession of a library or archive that have been loaned to that library or archive for an indefinite period.

(10) Where an act which would otherwise infringe any of the rights conferred by this Act is permitted under this Act it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict that act.

(11) A reference in this Act to the copyright owner or the rightsowner shall include a reference to a person designated by the copyright owner or the rightsowner to act on his or her behalf in infringement proceedings.

(12) (*a*) A reference in this Act to a Part, Chapter, Division, section or Schedule is a reference to a Part, Chapter, Division or section of, or Schedule to, this Act unless it is indicated that a reference to some other Act is intended.

(*b*) A reference in this Act to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(*c*) A reference in this Act to any other enactment shall, except where the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment including this Act.

F8[Provisions supplementary to definition of "broadcast"

2A.—The definition of "broadcast" shall not be construed to prejudice the exclusive right under this Act of a person to make a work available by means of a broadcast of the work.]

Construction of references to rightsowner.

3.—(1) In the case of a right conferred by this Act to which different persons are entitled (whether in consequence of a partial assignment of such right or otherwise) in respect of the application of the right—

(*a*) to undertake different acts or classes of acts restricted by that right, or

(*b*) to undertake one or more acts or classes of acts restricted by that right in different countries, territories, states or areas, or at different times,

the rightsowner shall be deemed to be the person who is entitled to the right in respect of its application to the undertaking of the act or class of acts restricted by the right, or, as the case may be, to the undertaking of the act or class of acts restricted by the right in the particular country, territory, state or area or at the particular time, which is relevant to the purpose concerned.

(2) In relation to a future right to which different persons are prospectively entitled, references in this Act to the prospective owner shall be construed accordingly.

(3) Where a right conferred by this Act (or any aspect of such right) is owned by more than one person jointly, references in this Act to the rightsowner are to all the owners, and any requirement of the licence of the rightsowner requires the licence of all of the owners.

Construction of references to copyright.

4.—(1) References in this Act to copyright shall include references to copyright under any previous enactment conferring copyright.

(2) References in the Act of 1927 to Part VI or VII of that Act shall be deemed to include references to this Act.

Encrypted broadcasts.

5.—A broadcast that is encrypted shall be regarded as being broadcast for lawful direct public reception where the means required for decoding the signals for those broadcasts have been made available by, or with the authority of, the person making the broadcast.

Making and protection of broadcasts.

6.—(1) Subject to *subsection (3)*, a reference in this Act to the person making a broadcast, broadcasting a work, or including a work in a broadcast shall be construed as a reference—

(*a*) to the person transmitting the programme, where he or she has responsibility to any extent for its contents, and

(*b*) to any person providing the programme who makes the arrangements necessary for its transmission with the person transmitting that programme,

and references to a programme, in the context of broadcasting, shall be construed as references to any item included in the broadcast.

(2) Subject to *subsection (3)*, the place from which a broadcast is made is the place where, under the control and responsibility of the person making the broadcast, the programme-carrying signals are introduced into an uninterrupted chain of communication including, in the case of a satellite transmission, the chain leading to the satellite and down towards the earth.

(3) Where the place from which a broadcast by way of satellite transmission is made is located in a country, territory, state or area other than a Member State of the EEA and the law of that country, territory, state or area fails to provide, at least, the following level of protection:

(*a*) exclusive rights in relation to broadcasting equivalent to those conferred by *section 37*;

(*b*) a right in relation to live broadcasting equivalent to that conferred on a performer by *section 204*; and

(*c*) a right for authors of sound recordings and performers to share in a single equitable remuneration in respect of the broadcasting of sound recordings,

then, the following provisions shall apply:

(i) where the place from which the programme-carrying signals are transmitted to the satellite (in this Act that place is referred to as the "uplink station") is located in a Member State of the EEA—

(I) that uplink station shall be treated as the place from which the broadcast is made, and

(II) the person operating the uplink station shall be treated as the person making the broadcast;

or

(ii) where the uplink station is not located in a Member State of the EEA but a person who is established in a Member State of the EEA has commissioned the making of the broadcast—

(I) the place in which that person has his or her principal establishment in a Member State of the EEA shall be treated as the place from which the broadcast is made, and

(II) that person shall be treated as the person making the broadcast.

F9[Ancillary online services

6A.—(1) An ancillary online service provided by wire or wireless means that contains works, as well as the acts of reproduction of such works which are necessary for the provision of, the access to or the use of the ancillary online service, shall be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment for the purposes of exercising the copyright and related rights required for that service.

(2) Subject to *subsection (3)*, when setting the charges to be paid for the rights referred to in *subsection (1)*, the rightholder and the broadcasting organisation shall take into account all aspects of the ancillary online service, including –

(*a*) the duration of online availability of the programmes provided in that service,

(*b*) the audience, and

(*c*) the language versions provided.

(3) The charges to be paid for the rights referred in in *subsection (1)* may be calculated on the basis of the revenues of the broadcasting organisation.

(4) The principle set out in *subsection (1)* shall not affect the right of the rightholder and the broadcasting organisation to limit the exploitation of such rights in accordance with the law of the European Union.

(5) If an agreement on the exercise of copyright and related rights concerning an ancillary online service and for any acts of reproduction which are necessary for such a service is in force on 7 June 2021, this section shall not apply to that agreement until 7 June 2023.

(6) In this section –

"ancillary online service" means an online broadcast, by or under the control and responsibility of a broadcasting organisation, of programmes simultaneously with or for a defined period of time after their broadcast by the broadcasting organisation and any material which is ancillary to such broadcast, where a member of the public can access the programme from a place and at a time chosen by them;

"programmes" means –

(*a*) radio programmes, or

(b) television programmes (other than the broadcast of sports events and works included in them) which are –

(i) news and current affairs programmes, or

(ii) fully financed own productions of the broadcasting organisation.**]**

Regulations and orders.

7.—(1) The Minister may make regulations for the purpose of enabling this Act to have full effect.

(2) Regulations made under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of this Act.

(3) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed.

(4) The Government or Minister, as the case may be, may by order amend or revoke an order made by the Government or the Minister under this Act including an order made under this subsection (other than an order made under *section 1(2)*).

Laying of regulations and orders.

8.—Every order (other than an order made under *section 1(2)*) or regulation made by the Minister F10**[**, the Minister for the Environment, Heritage and Local Government**]** or the Minister for Finance under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses.

9.—The expenses incurred by the Minister F11**[**and the Minister for the Environment, Heritage and Local Government**]** in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Transitional provisions and repeals.

10.—(1) The *First Schedule* shall have effect with respect to transitional matters.

(2) The Acts mentioned in *column (2)* of *Part I* of the *Second Schedule* are hereby repealed to the extent mentioned in *column (3)* of that Schedule.

(3) The statutory instruments mentioned in *column (2)* of *Part II* of the *Second Schedule* are hereby revoked to the extent mentioned in *column (3)* of that Schedule.

Prosecution of offences.

11.—(1) Summary proceedings for an offence under this Act may be brought and prosecuted by the Minister.

(2) Notwithstanding the provisions of section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be commenced at any time within 12 months from the date on which the offence was committed.

Offences by bodies corporate.

12.—Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or any other person who was acting or purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Offences by members of partnership.

13.—(1) Without prejudice to any liability of a partner under *subsection (3)*, where an offence under this Act is committed by a partnership any proceedings shall be brought against the partnership in the name of the partnership and not in the name of the individual partner.

(2) A fine imposed on a partnership on its conviction in proceedings brought under *subsection (1)* shall be paid out of the assets of the partnership.

(3) Where a partnership is guilty of an offence under this Act, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent commission of the offence, shall also be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Service of notices.

14.—(1) A notice required to be served or given under this Act shall, subject to *subsection (2)*, be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways—

(*a*) by delivering it to the person,

(*b*) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address,

(*c*) by sending it by post in a prepaid letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address,

(*d*) by sending it by such other method (including electronic method) as the Minister may decide,

(*e*) where the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and notice is required to be served on, or given to, him or her in respect of any premises, by delivering it to a person over the age of 16 years of age resident in or employed at the premises or by affixing it in a conspicuous position on or near the premises.

(2) Where a notice under this Act is to be served on or given to a person who is the owner or occupier of any premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words "the owner" or, as the case may require, "the occupier".

(3) For the purposes of this section, a company within the meaning of the Companies Acts, 1963 to 1999, shall be deemed to be ordinarily resident at its registered office, and every other body corporate, unincorporated body or person, including a partnership shall be deemed to be ordinarily resident at its principal office or place of business.

(4) A person shall not at any time during the period of 3 months after a notice is affixed under *subsection (1)(e)* remove, alter, damage or deface the notice without lawful authority.

(5) A person who contravenes *subsection (4)* shall be guilty of an offence and shall be liable on summary conviction to a F12**[**class C fine**]**.

Fees.

15.—The Public Offices Fees Act, 1879, shall not apply in respect of any fees payable under this Act.

Jurisdiction of Courts.

16.—An appeal lies from the making of an order under this Act—

(*a*) from the District Court to the Circuit Court, where the order is made by the District Court,

(*b*) from the Circuit Court to the High Court, where the order is made by the Circuit Court,

(*c*) from the Central Criminal Court to the Court of Criminal Appeal, where the order is made by the Central Criminal Court.

F13**[**Circuit Court

16A.—The Circuit Court shall have jurisdiction to hear and determine intellectual property claims.**]**

F14**[**District Court

16B.—(1) The District Court shall have jurisdiction to hear and determine intellectual property claims.

(2) The District Court in which such a claim shall be heard is the District Court Area in which the defendant concerned ordinarily resides or carries on any business, trade or profession.**]**

PART II

COPYRIGHT

CHAPTER 1

Subsistence of Copyright

Copyright and copyright works.

17.—(1) Copyright is a property right whereby, subject to this Act, the owner of the copyright in any work may undertake or authorise other persons in relation to that work to undertake certain acts in the State, being acts which are designated by this Act as acts restricted by copyright in a work of that description.

(2) Copyright subsists, in accordance with this Act, in—

(*a*) original literary, dramatic, musical or artistic works,

(*b*) sound recordings, films, broadcasts or cable programmes,

(*c*) the typographical arrangement of published editions, and

(*d*) original databases.

(3) Copyright protection shall not extend to the ideas and principles which underlie any element of a work, procedures, methods of operation or mathematical concepts and, in respect of original databases, shall not extend to their contents and is without prejudice to any rights subsisting in those contents.

(4) Copyright shall not subsist in a work unless the requirements for copyright protection specified in this Part with respect to qualification are complied with.

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

(6) Copyright shall not subsist in a work which is, or to the extent that it is, a copy taken from a work which has been previously made available to the public.

Copyright in literary, dramatic or musical works and original databases.

18.—(1) Copyright shall not subsist in a literary, dramatic or musical work or an original database until that work is recorded in writing or otherwise by or with the consent of the author.

(2) References in this Part to the time at which, or the period during which, a work referred to in *subsection (1)* is made are to the time at which, or the period during which, that work is so recorded.

(3) Copyright may subsist in a work that is recorded and may subsist in the recording of a work.

Copyright in sound recordings.

19.—Copyright shall not subsist in a sound recording until the first fixation of the sound recording is made.

Exclusion of copyright in retransmission.

20.—(1) Subject to *subsection (2)*, copyright shall not subsist in the transmission of a broadcast or other material in a cable programme service unless the transmission alters the content of the broadcast or other materials.

(2) Nothing in *subsection (1)* shall affect the copyright subsisting in the broadcast or other material arising other than by virtue of the transmission.

CHAPTER 2

Authorship and Ownership of Copyright

Interpretation of author.

21.—In this Act, "author" means the person who creates a work and includes:

(*a*) in the case of a sound recording, the producer;

(*b*) in the case of a film F15**[**(including the soundtrack accompanying the film)**]**, the producer and the principal director;

(*c*) in the case of a broadcast, the person making the broadcast or in the case of a broadcast which relays another broadcast by reception and immediate retransmission, without alteration, the person making that other broadcast;

(*d*) in the case of a cable programme, the person providing the cable programme service in which the programme is included;

(*e*) in the case of a typographical arrangement of a published edition, the publisher;

(*f*) in the case of a work which is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken;

(*g*) in the case of an original database, the individual or group of individuals who made the database; and

(*h*) in the case of a photograph, the photographer.

Works of joint authorship.

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

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

(3) A broadcast shall be treated as a work of joint authorship if more than one person makes the broadcast and the contribution of each person is not distinct from that of any of the others involved in making that broadcast.

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

First ownership of copyright.

23.—(1) The author of a work shall be the first owner of the copyright unless—

(*a*) the work is made by an employee in the course of employment, in which case the employer is the first owner of any copyright in the work, subject to any agreement to the contrary,

(*b*) the work is the subject of Government or Oireachtas copyright,

(*c*) the work is the subject of the copyright of a prescribed international organisation, or

(*d*) the copyright in the work is conferred on some other person by an enactment.

(2) Where a work, other than a computer program, is made by an author in the course of employment by the proprietor of a newspaper or periodical, the author may use the work for any purpose, other than for the purposes of making available that work to newspapers or periodicals, without infringing the copyright in the work.

CHAPTER 3

Duration of Copyright

Duration of copyright in a literary, dramatic, musical or artistic work or an original database.

24.—F16**[**(1) The copyright in a literary, dramatic, musical or artistic work, or an original database, shall expire 70 years after the death of the author irrespective of—

(*a*) the date (if any) on which the work is first lawfully made available to the public, or

(*b*) whether the work is ever lawfully made available to the public.**]**

F17**[**(1A) Notwithstanding *subsection (1)*, the copyright in a musical composition with words shall expire 70 years after the last of the following persons dies, namely:

(*a*) the author or authors of the musical composition whose identity is known;

(*b*) the author or authors of the words whose identity is known;

provided that both the musical composition and the words were specifically created for the musical composition with words and that either the musical composition or the words were protected by copyright in at least one Member State on 1 November 2013, or were created on or after that date.**]**

(2) The copyright in a work specified in *subsection (1)* F17**[**, or, in the case of a musical composition with words referred to in *subsection (1A)*, a musical composition with words,**]** which is anonymous or pseudonymous shall expire 70 years after the date on which the work is first lawfully made available to the public.

(3) In respect of an anonymous or pseudonymous work referred to in *subsection (2)*—

(*a*) where the pseudonym adopted by the author leaves no doubt as to his or her identity,

(*b*) where the author discloses his or her identity, or

(*c*) where his or her identity becomes known during the 70 years from the date on which the work is first lawfully made available to the public,

the copyright in that work shall expire 70 years after the death of that author.

F17**[**(4) In relation to a musical composition with words referred to in *subsection (1A)*, references in *subsection (3)* and in *section 32(1)* to the identity of the author becoming known or being disclosed shall be construed as references to the identity of any of the authors of the musical composition or the words becoming known or being disclosed.**]**

F18**[**Transitional provisions relating to *section 24(1A)*.

24A.—(1) Subject to *subsection (2)*, where, in relation to a musical composition with words referred to in *section 24(1A)*—

(*a*) the copyright in either the musical composition or the words had expired prior to 1 November 2013 and is revived by virtue of *section 24(1A)*, or

(*b*) the copyright in the musical composition or the words did not expire before 1 November 2013 and is extended by virtue of *section 24(1A)*,

the owner of the copyright as so revived or extended shall be the author, or, in the event that that person is deceased, his or her legal personal representative.

(2) Where, in the case of revived or extended copyright specified in *subsection (1)*, a deed of assignment or other binding legal instrument transferring ownership in the copyright of the musical composition or the words expressly provided that, in the event of any revival or extension of the copyright being effected by or under any enactment, the copyright as so revived or extended would vest in the person to whom ownership in the copyright was transferred, the ownership of the copyright shall vest accordingly.

(3) Where, in relation to a musical composition with words referred to in *section 24(1A)*, the copyright in either the musical composition or the words had expired prior to 1 November 2013 and was revived by virtue of *section 24(1A)* ("revived copyright")—

(*a*) a person who, before 1 November 2013, undertook the exploitation of such a work at a time when that work was not protected by copyright shall not be regarded as having infringed the revived copyright,

(*b*) a person who, before 1 November 2013, undertook the exploitation of such a work at a time when that work was not protected by copyright shall not infringe the revived copyright by continuing that exploitation of that work,

(*c*) a person who, before 1 November 2013, made preparations to exploit such a work at a time when that work was not protected by copyright shall not infringe the revived copyright by the exploitation which he or she undertakes of that work on foot of such preparations,

(*d*) a person who does anything in relation to a literary, dramatic or musical work or a film that contains a copy of such a work or is an adaptation of such a work, where the literary, dramatic or musical work or film—

(i) was made before commencement, or

(ii) was made on foot of preparations made before 1 November 2013,

shall not infringe the revived copyright in such a work if—

(I) the copy or adaptation of that work was made before 1 November 2013 at a time when that work was not protected by copyright, or

(II) the copy or adaptation of that work was made on foot of preparations made before 1 November 2013 at a time when that work was not protected by copyright, and

(*e*) a person who exploits such a work on or after 1 November 2013 shall not infringe revived copyright in that work if the exploitation is done at a time when, or is on foot of preparations made at a time when, the name and the address of a person entitled to authorise the exploitation cannot by reasonable inquiry be ascertained.

(4) It is not an infringement of any moral right conferred by *Chapter 7* of *Part II* to do anything which by virtue of *subsection (3)* is not an infringement of copyright.**]**

Duration of copyright in films.

25.—(1) Subject to *subsection (2)*, the copyright in a film shall expire 70 years after the last of the following persons dies, namely:

(*a*) the principal director of the film;

(*b*) the author of the screenplay of the film;

(*c*) the author of the dialogue of the film;

(*d*) the author of music specifically composed for use in the film.

(2) Where a film is first lawfully made available to the public during the period of 70 years following the death of the last of the persons specified in *subsection (1)*, the copyright in that film shall expire 70 years after the date of such making available.

(3) Where the copyright in a film has expired, a person who, after such expiration, makes available to the public the film or causes the film to be so made available shall not infringe the copyright in any work included in the film.

Duration of copyright in sound recordings.

26.—The copyright in a sound recording shall expire—

(*a*) 50 years after the sound recording is made, or

(*b*) where it is first lawfully made available to the public during the period specified in *paragraph (a)*, 50 years after the date of such making F19**[**available, or**]**

F20**[**(*c*) notwithstanding *paragraph (b)*, where the sound recording is lawfully made available to the public during the period specified in *paragraph (a)*, and—

(i) where the rights of the performer and the producer would still have been protected on 1 November 2013, had the European Union (Term of Protection of Copyright and Certain Related Rights) (Directive 2011/77/EU) Regulations 2013 not come into operation on that date, or

(ii) where the sound recording is created on or after 1 November 2013,

70 years after the date of such making available.**]**

Duration of copyright in broadcasts.

27.—(1) The copyright in a broadcast shall expire 50 years after the broadcast is first lawfully transmitted.

(2) The copyright in a repeat broadcast shall expire at the same time as the copyright in the original broadcast and no copyright shall subsist in a repeat broadcast which is transmitted after the expiration of the copyright in the original broadcast.

Duration of copyright in cable programmes.

28.—(1) The copyright in a cable programme shall expire 50 years after the cable programme is first lawfully included in a cable programme service.

(2) The copyright in a repeat cable programme shall expire at the same time as the copyright in the original cable programme and no copyright shall subsist in a repeat cable programme which is included in a cable programme service after the expiration of the copyright in the original cable programme.

Duration of copyright in typographical arrangements.

29.—The copyright in a typographical arrangement of a published edition shall expire 50 years after the date on which it is first lawfully made available to the public.

Duration of copyright in computer-generated works.

30.—The copyright in a work which is computer-generated shall expire 70 years after the date on which the work is first lawfully made available to the public.

Duration of copyright in works in volumes, parts, etc.

31.—Where a work is lawfully made available to the public in volumes, parts, instalments, issues or episodes and the copyright subsists from the date on which the work is so made available, the copyright shall subsist in respect of each separate item.

F21**[**Duration of copyright in relation to registered design.

31A.—F22**[**...**]]**

F23**[**Transitional provisions for *section 31A*

31B.—(1) An act to which *subsection (2)* applies is not an infringement of the copyright in a design registered under the Industrial Designs Act 2001 if—

(*a*) that act is done pursuant to a contract entered into before the relevant date, and

(*b*) that act, if it were done immediately before the relevant date, would not, by virtue of *section 31A*, have been such an infringement.

(2) An act to which this subsection applies is any of the following acts done, in relation to a design referred to in *subsection (1)*, during the 6 months period immediately following and including the relevant date:

(*a*) the copying of the design;

(*b*) the provision of means for making a copy of the design;

(*c*) the importation into the State of a copy of the design.

(3) An act to which *subsection (4)* applies is not an infringement of the copyright in a design registered under the Industrial Designs Act 2001 if that act, if it were done on the day immediately before the relevant date, would not, by virtue of *section 31A*, have been such an infringement.

(4) An act to which this subsection applies is any of the following acts done, in relation to a design referred to in *subsection (3)*, during the 6 months period immediately following and including the relevant date:

(*a*) the issuing or selling, or renting or lending, to the public of a copy of the design that was made in, or imported into, the State—

(i) before the relevant date, or

(ii) during that 6 months period pursuant to a contract entered into before the relevant date;

(*b*) the communication to the public of that design in connection with anything done in reliance on *paragraph (a)*.

(5) In this section, "relevant date" means the date referred to in section 1(7) of the Copyright and Other Intellectual Property Law Provisions Act 2019.**]**

Miscellaneous matters in relation to duration.

32.—(1) Where the identity of the author of an anonymous or pseudonymous work becomes known or is disclosed after the term of copyright provided in *section 24(2)* has expired, the term of copyright provided in *subsection (1)* F24**[**or *subsection (1A)*, as the case may be,**]** of that section shall not apply, and copyright in the work shall be deemed to have expired 70 years from the date on which the work was first lawfully made available to the public.

(2) Copyright shall not subsist in an anonymous or pseudonymous literary, dramatic, musical or artistic work, F24**[**or a musical composition with words,**]** or original database where it is reasonable to presume that the author has been dead for 70 years or more.

(3) Copyright shall not subsist in an anonymous or pseudonymous film where it is reasonable to presume that the last of any of the persons specified in *section 25* has been dead for 70 years or more.

(4) In relation to works of joint authorship, the reference in *section 24* to the death of the author shall be construed—

(*a*) where the identity of all of the authors is known, as a reference to the death of the last of the joint authors, or

(*b*) where the identity of any of the authors is known and the identity of one or more of the others is not, as a reference to the death of the last of the joint authors whose identity is known.

(5) In relation to a work of joint authorship, references to the identity of the author becoming known or being disclosed shall be construed as references to the identity of any of the authors becoming known or being disclosed.

Expiry of copyright.

33.—Where the term of copyright in a work is not calculated from the death of the author or authors and the work is not lawfully made available to the public within 70 years of its creation, the copyright in that work shall expire on the expiration of that period of 70 years.

Making available of a work not previously made available.

F25**[34.**—(1) Subject to *subsection (2)*, any person who, after the expiration of the copyright in a work, lawfully makes available to the public for the first time a work which was not previously so made available, shall benefit from rights equivalent to the rights of an author (other than the moral rights) for 25 years from the date on which the work is first lawfully made available to the public.

(2) A work is not lawfully made available to the public by a person for the purposes of *subsection (1)* if the person has made the work available to the public without first obtaining the express consent of the owner of the physical medium in which the work is embodied, or on which the work is recorded, to do so.**]**.

F26**[**Presumption relevant to *section 34*.

34A.—In civil proceedings for infringement of a right conferred in respect of a work made available to the public under *section 34*, where copies of the work bear or incorporate a statement, label or other mark that a named person is the owner of rights in the work under that section, the statement, label or mark shall be admissible as evidence of the fact stated or indicated and shall be presumed to be correct, unless the contrary is proved.**]**

Calculation of term of copyright.

35.—Where a term of copyright is provided for in this Act, the term shall be calculated from the first day of January of the year following the event that gives rise to that term.

Non-application of certain provisions on duration to Government copyright, etc.

36.—*Sections 24* to *35* shall not apply to Government or Oireachtas copyright or to the copyright of prescribed international organisations.

CHAPTER 4

Rights of Copyright Owner

Acts restricted by copyright in a work.

37.—(1) Subject to the exceptions specified in *Chapter 6* and to any provisions relating to licensing in this Part, the owner of the copyright in a work has the exclusive right to undertake or authorise others to undertake all or any of the following acts, namely:

(*a*) to copy the work;

(*b*) to make available to the public the work;

(*c*) to make an adaptation of the work or to undertake either of the acts referred to in *paragraph (a)* or *(b)* in relation to an adaptation,

and those acts shall be known and in this Act referred to as "acts restricted by copyright".

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

F27**[**(3) For the purposes of any reference in this Act to the undertaking of an act restricted by the copyright in a work—

(*a*) "work" shall be construed as a reference to—

(i) the work as a whole,

(ii) any substantial part of the work, or

(iii) rights identifying information embedded or otherwise incorporated in the work, and

(*b*) the undertaking of an act indirectly, as well as directly, shall be taken to be included in such reference.**]**

Playing of sound recordings — licences of right.

38.—(1) Notwithstanding the provisions of *section 37*, where a person proposes to—

(*a*) play a sound recording in public, or

(*b*) include a sound recording in a broadcast or a cable programme service,

he or she may do so as of right where he or she—

(i) agrees to make payments in respect of such playing or inclusion in a broadcast or a cable programme service to a licensing body, and

(ii) complies with the requirements of this section.

(2) A person may avail of the right to play a sound recording in public or to include a sound recording in a broadcast or a cable programme service, where he or she—

(*a*) gives notice to each licensing body concerned of his or her intention to play sound recordings in public or include sound recordings in a broadcast or a cable programme service,

(*b*) informs each of those bodies of the date on and from which he or she intends to play sound recordings in public or include sound recordings in a broadcast or a cable programme service,

(*c*) makes payments to the licensing body at intervals of not less than 3 months in arrears,

(*d*) complies with any reasonable conditions relating to payments under this section as may be notified to him or her by the licensing body from time to time, and

(*e*) complies with any reasonable requests for information from the licensing body to enable it to calculate and manage payments under this section.

(3) A person who satisfies the conditions specified in *subsection (2)* shall be deemed to be in the same position as regards infringement of copyright as if he or she had been the holder of a licence granted by the owner of the copyright in question at all material times.

(4) Where the person intending to play sound recordings in public or to include sound recordings in a broadcast or a cable programme service and the licensing body fail to reach agreement as to fair payment under *subsection (2)* within a reasonable time, the terms of the proposed agreement shall be referred to the Controller for determination of the amount and terms of payment.

(5) In the case of a dispute referred to the Controller under *subsection (4)*, a person shall not exercise the right conferred by *subsection (1)* unless he or she—

(*a*) gives reasonable notice to the Controller that he or she has commenced or intends to commence the playing of sound recordings in public and that a dispute has arisen between him or her and the licensing body concerned as to the terms of payment and the exercise of the right; and

(*b*) applies to the Controller for a determination under *subsection (4)*.

(6) Where the terms of a proposed agreement are referred to the Controller under *subsection (4)* a person shall not exercise a right conferred by *subsection (1)* unless he or she—

(*a*) gives notice in writing to the Controller of his or her intention to exercise the right, and of the date on which he or she proposes to begin to do so, and

(*b*) applies in writing to the Controller for a determination under *subsection (4)*.

(7) On an application to settle the terms of payment being referred to the Controller, he or she shall consider the matter and make such order as he or she may determine to be reasonable in the circumstances and that order shall take effect on and from the date on which the applicant begins to exercise the right, and any necessary repayments or further payments shall be made in respect of amounts which, in consequence of the terms of the order, have fallen due.

(8) Where no request for payment has been made by the licensing body, or where the amount requested by the licensing body is disputed by the person exercising the right then, pending the making of an order by the Controller under *subsection (7)*, the person exercising the right shall pay to the licensing body such amount as he or she considers reasonable, and shall notify the licensing body and the Controller of his or her intention to do so.

(9) A person exercising the right conferred by *subsection (1)*, or who has given notice to the Controller of his or her intention to do so, may also refer to the Controller the question of—

(*a*) whether any condition relating to payment, notice of which has been given to him or her by the licensing body concerned is a reasonable condition, or

(*b*) whether any licence condition, notice of which has been given to him or her by the licensing body in question, is a reasonable condition, or

(*c*) whether any information required by the licensing body is information which the licensing body can reasonably require him or her to provide.

(10) Where a reference is made under *subsection (9)*, the Controller shall consider the matter and make such order as he or she may determine to be reasonable in the circumstances.

(11) A person exercising the right conferred by *subsection (1)* or a licensing body may apply to the Controller to review any order under *subsection (7)* or *(10)*.

(12) An application under *subsection (11)* may not be made except with the special leave of the Controller—

(*a*) within 12 months from the date of the order or of the decision on a previous application under this section, or

(*b*) where 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, is due to expire within 15 months of that decision,

until at least 3 months before the expiration of the order.

(13) Where an application is made under *subsection (11)*, the Controller shall consider the matter and make such order confirming or varying the original order as he or she may determine to be reasonable in the circumstances and any order made under this subsection shall be for such period as may be specified by the Controller.

(14) This section shall not apply in any circumstances where sound recordings are made available to the public by wire or wireless means in such a way that members of the public may access the sound recordings from a place and at a time individually chosen by them (including the making available of copies of sound recordings through the Internet).

(15) Notwithstanding *section 149*, in this section "licensing body" means a society, a company registered under the Companies Acts, 1963 to 1999, or other organisation which has as one of its objects the negotiation or granting of licences to play sound recordings in public or to include sound recordings in broadcasts or cable programme

services, either as owner or prospective owner of copyright in the said sound recording or as his or her exclusive licensee, agent or designated representative and shall include a human person who has the right to negotiate or grant a licence to play sound recordings in public or to include sound recordings in broadcasts or cable programme services, either as owner or prospective owner of copyright in the sound recordings.

Reproduction right.

39.—(1) References in this Part to copying shall be construed as including references to all or any of the following, namely:

(*a*) in relation to any work—

(i) storing the work in any medium,

(ii) the making of copies which are transient or incidental to some other use of the work;

(*b*) in relation to an artistic work, 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;

(*c*) in relation to a film, television broadcast or cable programme, making a photograph of the whole or a substantial part of any image forming part of the film, broadcast or programme;

(*d*) in relation to a typographical arrangement of a published edition, making a reprographic copy of the arrangement.

(2) There shall be a right of the owner of copyright to copy a work or to authorise others to do so which shall be known and in this Part referred to as the "reproduction right".

Making available right.

40.—(1) References in this Part to the making available to the public of a work shall be construed as including all or any of the following, namely:

(*a*) making available to the public of copies of the work, by wire or wireless means, in such a way that members of the public may access the work from a place and at a time chosen by them (including the making available of copies of works through the Internet);

(*b*) performing, showing or playing a copy of the work in public;

(*c*) broadcasting a copy of the work;

(*d*) including a copy of the work in a cable programme service;

(*e*) issuing copies of the work to the public;

(*f*) renting copies of the work;

(*g*) lending copies of the work F28**[**...**]**,

and references to "lawfully making available to the public" shall mean the undertaking of any of the acts referred to in *paragraphs (a)* to *(g)* by or with the licence of the copyright owner.

(2) References in this Part to the making available to the public of copies of a work shall include the making available to the public of the original of the work.

(3) Subject to *subsection (4)*, the provision of facilities for enabling the making available to the public of copies of a work shall not of itself constitute an act of making available to the public of copies of the work.

(4) Without prejudice to *subsection (3)*, where a person who provides facilities referred to in that subsection is notified by the owner of the copyright in the work concerned that those facilities are being used to infringe the copyright in that work and that person fails to remove that infringing material as soon as practicable thereafter that person shall also be liable for the infringement.

(5) Without prejudice to *subsection (4)*, the Minister may prescribe the form of the notice to be given under that subsection and the form shall specify—

(*a*) the name and address of the person claiming to be the owner of the copyright in the work concerned,

(*b*) the grounds that the person requesting the removal of material has for such removal, and

(*c*) a list of the material which is to be removed.

F29**[**(5A)(*a*) The owner of the copyright in a work may, in respect of that work, apply to the High Court for an injunction against an intermediary to whom paragraph 3 of Article 8 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001[1] on the harmonisation of certain aspects of copyright and related rights in the information society applies.

(*b*) In considering an application for an injunction under this subsection, the court shall have due regard to the rights of any person likely to be affected by virtue of the grant of any such injunction and the court shall give such directions (including, where appropriate, a direction requiring a person be notified of the application) as the court considers appropriate in all of the circumstances.**]**

(6) References in this Part to "performance", in relation to a work, shall include—

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

(*b*) any means of presentation of sounds or images, or any combination of sounds or images or representations thereof, including presentation by means of a sound recording, film, broadcast or cable programme of the work.

(7) Where copyright in a work is infringed by its being performed, played or shown in public, by means of apparatus for receiving sounds, images or data or any combination of sounds, images or data, or the representations thereof, conveyed by any means, the person by whom sounds, images or data or any combination of sounds, images or data, or the representations thereof, are sent shall not be regarded as liable for the infringement and a performer shall not be regarded as liable for the infringement to the extent that the infringement relates to his or her activity as a performer.

F30**[**(7A) For the avoidance of doubt, no infringement of any right created by this Part in relation to an artistic or literary work occurs by reason of the placing on display the work, or a copy thereof, in a place or premises to which members of the public have access.**]**

(8) There shall be a right of the owner of copyright to make available to the public copies of a work or to authorise others to do so which shall be known and in this Part referred to as the "making available right".

Distribution right.

41.—(1) References in this Part to the issue of copies of a work to the public shall be construed as including:

(*a*) the act of putting into circulation in a Member State of the EEA copies not previously put into circulation in a Member State of the EEA by or with the licence of the copyright owner; or

(*b*) the act of putting into circulation outside the Member States of the EEA copies not previously put into circulation in a Member State of the EEA or elsewhere.

(2) Without prejudice to the rental right or the lending right, references in this Part to the issue of copies of a work to the public shall not include:

(*a*) any subsequent circulation of copies previously put into circulation; or

[1] OJ No. L. 167, 22.6.2001, p.10.

(*b*) any subsequent importation of such copies into the State or any other Member State of the EEA,

except in so far as *subsection (1)(a)* applies to putting into circulation in the Member States of the EEA copies previously put into circulation outside the Member States of the EEA.

(3) References in this section to "circulation" shall include sale, rental or loan.

(4) There shall be a right of the owner of copyright to issue copies of a work to the public or to authorise others to do so which shall be known and in this Part referred to as the "distribution right".

Rental and lending right.

42.—(1) References in this Part to "rental" or "lending" shall be construed as including references to the rental or lending of:

(*a*) a literary, dramatic or musical work, film or original database;

(*b*) an artistic work, other than—

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

(ii) a work of applied art;

(*c*) a sound recording; or

(*d*) a typographical arrangement of a published edition,

and shall not include, in the case of a computer program, rentals where the program itself is not the essential object of the rental.

(2) In this Part, subject to *subsection (3)*—

(*a*) "rental" means making a copy of a work available for use, on terms that it is to be or may be returned after a limited period of time, for direct or indirect economic or commercial advantage, and

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

(3) References in this Part to "rental" or "lending" shall not include the making available of copies of a work for the purposes of—

(*a*) performing, playing or showing in public, broadcasting or inclusion in a cable programme service,

(*b*) exhibition in public, or

(*c*) on the spot reference use.

(4) The making of a copy of a work available between establishments to which members of the public have access shall not infringe the copyright in the work.

(5) For the purpose of this section, where lending by an establishment to which members of the public have access gives rise to a payment the amount of which does not exceed that which is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage.

(6) (*a*) There shall be a right of the owner of copyright to rent copies of a work or to authorise others to do so which shall be known and in this Part referred to as the "rental right".

(*b*) F31**[**Subject to *subsection (7),* there**]** shall be a right of the owner of copyright to lend copies of a work or to authorise others to do so which shall be known and in this Part referred to as the "lending right".

F32**[**(7) The lending right in relation to a work does not apply at any time in a period during which a scheme for the remuneration of authors is in effect, pursuant to *section 42A*, in relation to works of a class in which that work is included, whether the author, or (in the case of a work of joint authorship) any of the authors, is a participant in that scheme or not.**]**

F33**[**Public Lending Remuneration Scheme.

42A.—(1) The Minister for the Environment, Heritage and Local Government may by regulation establish a scheme, to be known as the Public Lending Remuneration Scheme, to remunerate authors, out of moneys voted by the Oireachtas for the purpose, for the lending by public libraries of qualifying works.

(2) For the purposes of *subsection (1)*, a work is a qualifying work in relation to a particular period if—

(*a*) in relation to that period, it is a work included in a class of works declared by regulations made for the purposes of that subsection to be a class of works to which the scheme applies, and

(*b*) the author of the work (or, in the case of a work of joint authorship, any one or more of the joint authors) is a citizen or subject of, or is an individual domiciled or ordinarily resident in, a Member State of the EEA.

(3) Regulations made for the purposes of *subsection (1)* shall make comprehensive provision for the operation of the Public Lending Remuneration Scheme, and may include, in particular, provisions relating to—

(*a*) the manner of participation in the scheme by individual authors, including, but not limited to—

(i) a requirement for the registration of authors and their works as a condition of participation in the scheme, and

(ii) in the case of works of joint authorship, provision for distinguishing, between those of the joint authors who are citizens or subjects of, or are individuals domiciled or ordinarily resident in, Member States of the EEA and those who are not,

(*b*) in relation to any requirement for the registration of authors—

(i) the manner of maintaining the register, and

(ii) the form and particulars of entries in it,

(*c*) the manner of calculating the entitlements of participating authors, including, but not limited to—

(i) the manner of calculating, or estimating, the number of instances of lending of the works of individual authors or of individual works of individual authors,

(ii) the rate of remuneration, including—

(I) differential rates of remuneration for particular classes of work, and

(II) in the case of works of joint authorship, differential rates of remuneration for the individual joint authors,

(iii) the periods in respect of which payments may be made under the scheme, and

(iv) minimum and maximum amounts payable, in respect of a specified period, to individual participating authors,

(*d*) the manner in which payments under the scheme are to be made,

(*e*) the establishment or designation of one or more persons or bodies to exercise powers and perform duties in respect of the administration of the scheme

or any part of it (including the making of payments under the scheme), and

(*f*) the making of arrangements with authorities in other countries for—

(i) reciprocal registration of authors and works, and

(ii) the sharing and exchange of data relating to the operation of the scheme and similar schemes in those countries.

(4) A person who contravenes a provision of regulations made for the purposes of *subsection (1)* that is expressed to be a provision contravention of which attracts the operation of this subsection is guilty of an offence punishable on summary conviction by a fine not exceeding €5,000.

(5) In this section—

"author" includes, in relation to a recording of a performance, the performer;

"public library" means a library to which members of the public have access that is operated by or under the direction of a library authority within the meaning of section 77(1) of the Local Government Act 2001.**]**

Infringement by adaptation of works.

43.—(1) For the purposes of *section 37*—

(*a*) an adaptation is made when it is recorded in writing or otherwise, and

(*b*) it shall be immaterial to the interpretation of this section whether the adaptation has been recorded in writing or otherwise at the time an act restricted by copyright is undertaken.

(2) Without prejudice to the generality of *section 37(1)(c)*, in this Part, "adaptation" in relation to—

(*a*) a literary or dramatic work, film, sound recording, broadcast, cable programme or typographical arrangement of a published edition, includes—

(i) a translation, arrangement or other alteration of the work,

(ii) a version of a dramatic work which is converted into a non-dramatic work or the conversion of a non-dramatic work into a dramatic work, and

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

(*b*) a musical work, includes a translation, arrangement or other alteration or transcription of the work;

(*c*) an artistic work, includes a collage of the work with other works, an arrangement or other alteration of the work;

(*d*) a computer program, includes a translation, arrangement or other alteration of the computer program; or

(*e*) an original database, includes a translation, arrangement or other alteration of the original database.

(3) In this section "translation", in relation to a computer program, includes the making of a version of the computer program in which it is converted into or out of a computer language or code or into a different computer language or code.

CHAPTER 5

Secondary Infringement of Copyright

Interpretation of infringing copy.

44.—(1) In this Part "infringing copy", in relation to a copyright work, shall be construed in accordance with this section.

(2) A copy shall be an infringing copy—

(*a*) where the making of it constitutes an infringement of the copyright in the work concerned, or

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

(3) A copy of a work which has previously been issued to the public in accordance with *section 41* in any Member State of the EEA by, or with the licence of, the copyright owner shall not be deemed to be an infringing copy for the purposes of *subsection (2)*.

(4) Where, in any proceedings for infringement of the copyright in a work, the issue arises whether a copy is an infringing copy and it is proved that—

(*a*) the copy is a copy of the work concerned, and

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

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

Secondary infringement: dealing with infringing copy.

45.—A person infringes the copyright in a work where he or she without the licence of the copyright owner—

(*a*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*b*) imports into the State, otherwise than for his or her private and domestic use,

(*c*) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or

(*d*) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the owner of the copyright,

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

Secondary infringement: providing means for making infringing copies.

46.—(1) A person infringes the copyright in a work where he or she, without the licence of the copyright owner—

(*a*) makes,

(*b*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*c*) imports into the State, or

(*d*) has in his or her possession, custody or control,

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

(2) A person infringes the copyright in a work where he or she, 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 may be made by means of the reception of the transmission in the State or elsewhere.

Secondary infringement: permitting use of premises for infringing performances.

47.—(1) Where the copyright in a 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 shall also be liable for the infringement unless, when that person gave permission, he or she had reason to believe that the performance would not infringe copyright.

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

Secondary infringement: permitting use of apparatus for infringing performances.

48.—Where the copyright in a work is infringed by a public performance of the work, or by playing or showing the work in public, by means of apparatus for—

(*a*) playing sound recordings,

(*b*) showing films, or

(*c*) receiving sounds or images or any combination of sounds or images, or the representations thereof, conveyed by any means,

the following persons shall also be liable for the infringement:

(i) a person who supplied the apparatus, or any substantial part thereof if, when he or she supplied the apparatus or part thereof—

(I) he or she knew or had reason to believe that the apparatus was likely to be used to infringe copyright, or

(II) in the case of apparatus the normal use of which involves a public performance, playing or showing, he or she had reason to believe that it would be used to infringe copyright;

(ii) an owner or occupier of premises who gave permission for the apparatus to be brought onto the premises if, when the owner or occupier gave permission, he or she knew or had reason to believe that the apparatus was likely to be used to infringe copyright; and

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

CHAPTER 6

Acts Permitted in Relation to Works Protected by Copyright

Exemptions in respect of copyright works.

49.—In this Part, an act may be exempted under more than one category of exemption and the exemption of an act under one category of exemption shall not preclude its exemption under another category.

Fair dealing: research or private study.

50.—(1) Fair dealing with a literary, dramatic, musical or artistic work, sound recording, film, broadcast, cable programme, or non-electronic original database, for the purposes of research or private study, shall not infringe any copyright in the work.

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

(3) The copying by a person, other than the researcher or private student, is not fair dealing where—

(*a*) in the case of a librarian or archivist, he or she does anything which is not permitted under *section 63*, or

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

(4) In this Part, "fair dealing" means the making use of a literary, dramatic, musical or artistic work, film, sound recording, broadcast, cable programme, non-electronic original database or typographical arrangement of a published edition which has already been lawfully made available to the public, for a purpose and to an extent which will not unreasonably prejudice the interests of the owner of the copyright.

(5) In this Part, the following acts are not fair dealing—

(*a*) converting a computer program expressed in a low level computer language into a version expressed in a higher level computer language, or

(*b*) copying a computer program in an incidental manner in the course of converting that program.

F34**[**(6) The exemption provided for in this section shall not apply to reproductions of sheet music, on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects.**]**

Fair dealing: criticism or review.

51.—(1) Fair dealing with a work for the purposes of criticism or review of that or another work or of a performance of a work shall not infringe any copyright in the work where the criticism or review is accompanied by a sufficient acknowledgement.

F35**[**(2) It is not an infringement of the rights conferred by this Part if a copy of a work (other than a photograph) on current economic, political or religious matters or similar matters is made by a media business (within the meaning of section 28A(1) of the Competition Act 2002) and communicated by the media business to the public if—

(*a*) such use is not expressly reserved, and

(*b*) the copy and communication are accompanied by a sufficient acknowledgement.

(2A) Where a copy which would otherwise be an infringing copy is made under *subsection (2)* but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.**]**

(3) In F35**[**this Act**]**, "sufficient acknowledgement" means an acknowledgement identifying the work concerned by its title or other description and identifying the author unless—

(*a*) in the case of a work which has been lawfully made available to the public, it was so made available anonymously, or

(*b*) in the case of a work which has not been made available to the public, it is not possible for a person without previous knowledge of the facts to ascertain the identity of the author of the work by reasonable enquiry.

Incidental inclusion of copyright material.

52.—(1) The copyright in a work is not infringed by its inclusion in an incidental manner in another work.

(2) The copyright in a work is not infringed by the making available to the public of copies of anything the making of which was not, by virtue of *subsection (1)*, an infringement of the copyright.

(3) A work shall not be regarded as included in an incidental manner in another work where it is included in a manner where the interests of the owner of the copyright are unreasonably prejudiced.

(4) The copyright in a work which has been lawfully made available to the public is not infringed by the use of quotations or extracts from the work, where such use does not prejudice the interests of the owner of the copyright in that work and such use is accompanied by a sufficient acknowledgement.

F36**[**(5) Fair dealing with a work for the purposes of caricature, parody or pastiche shall not infringe the copyright in that work.**]**

Education

Acts done for purposes of instruction or examination.

53.—(1) Subject to *subsection (2)*, the copyright in a literary, dramatic, musical or artistic work or the typographical arrangement of a published edition is not infringed by its being copied in the course of F37**[**education or of preparation for education**]**.

(2) *Subsection (1)* shall not apply unless—

(*a*) the copying is done by or on behalf of a person giving or receiving F37**[**education**]**,

(*b*) the copying is not by means of a reprographic process, and

(*c*) the copy is accompanied by a sufficient acknowledgement.

(3) Subject to *subsection (4)*, the copyright in a sound recording, film, broadcast, cable programme or an original database is not infringed by its being copied in the course of F37**[**education or of preparation for education**]**.

(4) *Subsection (3)* shall not apply unless—

(*a*) the copying is done by or on behalf of a person giving or receiving F37**[**education**]**,

(*b*) the copying results in only a single copy being made, and

(*c*) the copy is accompanied by a sufficient acknowledgement.

(5) Subject to *subsection (6)*, the copyright in a work is not infringed by anything done for the purposes of an examination by way of setting questions, communicating questions to the candidates or answering questions.

(6) *Subsection (5)* shall not apply to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.

(7) Where a copy that would otherwise be an infringing copy is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

F38**[**Text and data mining for non-commercial research

53A.—(1) Subject to *subsection (3)*, the making of a copy of a work by a person who has lawful access to the work does not infringe copyright in the work where the copy is—

(*a*) made in order that the person may carry out a computational analysis of anything in the work for the sole purpose of research for a non-commercial purpose, and

(*b*) accompanied by a sufficient acknowledgement.

(2) A copy made under *subsection (1)* of a work which was, at the time when the copy was made, available without a restriction as to its access does not infringe copyright, and whether or not that work continues to be so available after that time.

(3) Where a copy of a work has been made under *subsection (1)* by a person, the copyright in the work is infringed where the copy—

(*a*) is transferred to any other person, except where the transfer is authorised by the copyright owner, or

(*b*) is used for any purpose other than the purpose referred to in *subsection (1)(a)*.

F39**[**(3A) A copy of a work made in compliance with *subsection (1)* shall be stored in a secure manner appropriate to the nature of the work concerned and may be retained for the purposes of research, including for the purposes of the verification of research results.

(3B) In order to ensure that a copy of a work is stored with an appropriate level of security in accordance with *subsection (3A),* the person responsible for the security and integrity of the networks and databases where the copy is hosted (in this section referred to as "the responsible person") shall ensure that only persons who have lawful access to the data contained in that copy shall be permitted to access those data, including through IP address validation or user authentication.

(3C) Where a copy of a work is made in compliance with *subsection (1)*, the author of the work, in order to satisfy himself or herself of the security and integrity of the networks and databases where the copy is hosted, shall –

(*a*) be informed of the making of the copy,

(*b*) be entitled to request information on the steps taken by the responsible person to comply with *subsection (3B)*, and

(*c*) be entitled, where he or she requests any additional security measures, to a response as soon as practicable as to whether or not those additional security measures will be applied.

(3D) The exceptions and limitations provided for under this section shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

(3E) Where a beneficiary of an exception or limitation under this section has legal access to the relevant protected work or subject matter, the relevant F40**[**rightholder**]** shall ensure that that beneficiary has the means of benefiting from that exception or limitation to the extent necessary to do so.

(3F) Any contractual provision contrary to this section shall be unenforceable.**]**

(4) Without prejudice to *section 374*, nothing in *Part VII* shall be construed as operating to prevent a person from undertaking an act permitted by this section.

(5) Without prejudice to the generality of *section 52(1)*, where the publication of the results of a computational analysis referred to in *subsection (1)(a)* of a copy of a work includes the reproduction of extracts from the work, such inclusion shall constitute inclusion in an incidental manner referred to in *section 52(1)* if the extracts are not more than are reasonably necessary to explain, or to assist in explaining, the results of the analysis.**]**

F41**[**Text and data mining for commercial purposes - exception

53B.—(1) Where F42**[**a rightholder**]** has not expressly reserved in an appropriate manner, in accordance with *subsection (3)*, the use of a work for reproduction or extraction for the purposes of text and data mining, a person who has lawful access to it but does not fall within the scope of *section 53A(1)*, may reproduce it for the purposes of text and data mining.

(2) Reproductions and extractions made pursuant to *subsection (1)* may be retained for as long as is necessary for the purposes of text and data mining.

(3) For the purposes of *subsection (1)*, F42**[**a rightholder**]** reserves the use of a work for reproduction or extraction for the purposes of text and data mining in an appropriate manner where the reservation concerned –

(*a*) is machine-readable in the case of content made publicly available online, including metadata and terms and conditions of a website or a service, and

(*b*) in case of content not made publicly available online, is clearly communicated to all persons who have lawful access to it.

(4) The exceptions and limitations provided for under this section shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.

(5) Where a beneficiary of an exception or limitation under this section has legal access to the relevant protected work or subject matter, the relevant F42**[**rightholder**]** shall ensure that that beneficiary has the means of benefiting from that exception or limitation to the extent necessary to do so.

(6) Any contractual provisions contrary to this section shall be unenforceable.**]**

Anthologies for educational use.

54.—(1) Subject to *subsection (2)*, the inclusion of a short passage from a literary, dramatic or musical work, original database or typographical arrangement of a published edition which has been lawfully made available to the public in a collection that—

(*a*) is intended for use—

(i) in educational establishments and is so described in its title, or

(ii) in any advertisements issued by or on behalf of the publisher,

and

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

shall not infringe the copyright in the work where the work itself is not intended for use in those establishments and the inclusion is accompanied by a sufficient acknowledgement.

(2) *Subsection (1)* shall not authorise the inclusion of more than 2 excerpts from works by the same author in collections which have been lawfully made available to the public by the same publisher within a period of 5 years.

(3) In relation to any given passage the reference in *subsection (2)* to excerpts from works of the same author—

(*a*) includes excerpts from works by him or her in collaboration with another author, and

(*b*) where the passage concerned is from such a work, includes excerpts from works by any of the authors, whether alone or in collaboration with another author.

(4) References in this section to the use of a work in an educational establishment shall be construed as references to any use of that work for the educational purposes of that establishment.

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

55.—(1) The performance of a literary, dramatic or musical work before an audience limited to persons who are teachers in or pupils in attendance at an educational establishment or other persons directly connected with the activities of that establishment—

(*a*) by a teacher or pupil in the course of the activities of the establishment concerned, or

(*b*) at the establishment by any person for the purposes of F43**[**education**]**,

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 at an educational establishment before an audience referred to in *subsection (1)* for the purposes of F43**[**education**]** is not a playing or showing of the work in public for the purposes of infringement of copyright.

(3) For the purposes of this section, a person is not directly connected with the activities of an educational establishment by reason only that he or she is a parent or guardian of a pupil in attendance at the educational establishment concerned.

(4) The Minister may specify by order establishments (other than schools) to be educational establishments for the purposes of this Act.

Recording by educational establishments of broadcasts and cable programmes.

56.—(1) A fixation of a broadcast or a cable programme, or a copy of such a fixation, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without infringing the copyright in the broadcast or cable programme, or in any work included in the broadcast or cable programme.

(2) This section shall not apply where there is a licensing scheme certified under *section 173* and the person making the copies knew or ought to have been aware of the existence of the licensing scheme.

(3) Where a copy which would otherwise be an infringing copy is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

F44**[**Illustration for education, teaching or scientific research

57.—(1) Subject to *subsections (2)* to *(4)*, it is not an infringement of the rights conferred by this Part—

(*a*) to make or cause to be made a copy or communication of a work for the sole purpose of illustration for education, teaching or scientific research or of preparation for education, teaching or scientific research, or

(*b*) for an educational establishment, for the educational purposes of that establishment, to reproduce or cause to be reproduced a work, or to do or cause to be done, any other necessary act, in order to display it.

(2) *Subsection (1)* shall apply only if the reproduction or communication is—

(*a*) made for purposes that are non-commercial,

(*b*) made only to the extent justified by the non-commercial purposes to be achieved, and

(*c*) accompanied by a sufficient acknowledgement.

(3) Not more than 5 per cent of any work can be copied under this section in any calendar year.

(4) Where a copy which would otherwise be an infringing copy is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.**]**

F45**[**(5) Any contractual provisions contrary to this section shall be unenforceable.**]**

F46**[**Distance learning provided by educational establishment

57A.—F47**[**(1)**]** F48**[**Subject to *subsection (2)*, it is not an infringement of the rights conferred by this Part for**]**—

(*a*) an educational establishment, for the educational purposes of that establishment, to communicate a work as part of a lesson or examination to a student of that establishment by telecommunication, and

(*b*) a student who has received such a lesson or examination to make a copy of the work in order to be able to listen to or view it at a more convenient time.**]**

F47**[**(2) *Subsection (1)* shall apply on condition that such use takes place –

(*a*) under the authority of an educational establishment, on its premises or at other venues, or through a secure electronic environment access to which is limited to an educational establishment's teaching staff and to pupils or students enrolled in a study programme, in particular through appropriate authentication procedures including password-based authentication, and

(*b*) is accompanied by an indication of the source, including the author's name, unless this turns out to be impossible.

(3) The exceptions and limitations provided for under this section shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

(4) Where a beneficiary of an exception or limitation under this section has legal access to the relevant protected work or subject matter, the relevant F49**[**rightholder**]** shall ensure that that beneficiary has the means of benefiting from that exception or limitation to the extent necessary to do so.

(5) Any contractual provisions contrary to this section shall be unenforceable.**]**

F50**[**Use by educational establishment of work available through Internet

57B.—(1) Subject to *subsection (2)*, it is not an infringement of the rights conferred by this Part if an educational establishment, for the educational purposes of that establishment, makes a copy or communication of a work that is available through the Internet.

(2) *Subsection (1)* shall not apply unless the copy or communication of the work concerned is accompanied by a sufficient acknowledgement.**]**

F51**[**Licensing schemes for educational establishments

57C.—(1) An exemption in respect of education provided in section *57*, *57A*, *57B*, *61(2)*, *62(2)*, *67(3)*, *92*, *221*, *225B*, *225C*, *225D*, *229(2)*, *234(3)*, *245(3)(a)* or *329* shall not apply where—

(*a*) there is a licensing scheme certified under *section 173* that is applicable to the exemption concerned, and

(*b*) the person making use of the work knew or ought to have been aware of the existence of the licensing scheme.

(2) The terms of a licence granted to an educational establishment on foot of a licensing scheme certified under *section 173* shall be void in so far as they purport to restrict the proportion of a work which may be copied or communicated (whether on payment or free of charge) to less than that which would be permitted under *section 57*, *61* or *62*, as the case may be.

(3) *Sections 152* to *155* shall apply in relation to a licensing scheme referred to in *subsection (1)(a)* as if the scheme were one to which those sections applied pursuant to *section 150*.**]**

F52**[**Copyright not infringed by lending by educational establishments.

58.—The copyright in a work is not infringed by the lending by an educational establishment of a copy of the work.**]**

F53**[**Cultural Heritage Institutions

58A.—(1) It is not an infringement of the rights conferred by this Part for a cultural heritage institution to make available, for non-commercial purposes, out-of-commerce works or other subject matter that are permanently in its collections, where –

(*a*) no collective management organisation exists that fulfils the conditions set out in Regulation 8(1)(a) of the European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021 (S.I. No. 567 of 2021) in relation to that database right,

(*b*) it is accompanied by sufficient acknowledgment, and

(*c*) such work is only made available on non-commercial websites.

(2) A copyright owner under this Part may exclude his or her work from the use referred to in *subsection (1)* at any time by notifying the relevant cultural heritage institution by electronic or other means and by including the following in the notice—

(*a*) notification that the owner is asserting his or her right pursuant to this section;

(*b*) sufficient details of the work to enable it to be identified and removed from public display.

(3) Upon receipt of a written request in accordance with *subsection (2)*, a cultural heritage institution shall terminate its use of the work or works referred to in that written request within 4 weeks of receiving it.

(4) This section shall not apply to sets of out-of-commerce works or other subject matter if, on the basis of the reasonable effort referred to in *subsection (5)*, there is evidence that such sets predominantly consist of—

(*a*) works, other than cinematographic or audiovisual works, first published or, in the absence of publication, first broadcast in a third country,

(*b*) cinematographic or audiovisual works, of which the producers have their headquarters or habitual residence in a third country, or

(*c*) works of third country nationals, where after a reasonable effort no Member State or third country could be determined pursuant to *paragraphs (a)* and *(b)*.

(5) At least 6 months before the work used under *subsection (1)* is distributed, communicated to the public or made available to the public, cultural heritage institutions, collective management organisations and library authorities, within the meaning of section 32 of the Local Government Act 1994, shall provide the following information on the Out-of-Commerce Works Portal established by the European Union Intellectual Property Office:

(*a*) the title, where possible, the author, and a brief summary of the contents of the out-of-commerce work that is proposed to be used in accordance with *subsection (1)*;

(*b*) the information about the options available to rightholders under this section;

(*c*) as soon as it is available and where relevant, information on the parties to the licence, the territories covered and the uses authorised under the license.

(6) For the purposes of *subsection (1)*, a work may be considered to be permanently in the collections of a cultural heritage institution where it is owned or permanently held by that institution, including as a result of a transfer of ownership or a licence agreement, legal deposit obligations or permanent custody arrangements.**]**

Libraries and Archives

Regulations relating to copying by libraries and archives.

59.—(1) The Minister may make regulations for the purposes of this section and those regulations may make different provisions for different descriptions of libraries or archives and for different purposes.

(2) Without prejudice to the generality of *subsection (1)*, the Minister may prescribe the libraries and archives to which F54**[***sections 60* to *70***]** apply and may prescribe all or any of the following:

(*a*) the conditions that are to be complied with when a librarian or archivist of a prescribed library or prescribed archive makes and supplies F55**[**, or causes to be made and supplied,**]** a copy of any part of a work which has been lawfully made available to the public to a person requiring a copy;

(*b*) the conditions that are to be complied with when a librarian or archivist of a prescribed library or prescribed archive makes and supplies F55**[**, or causes to be made and supplied,**]** to another prescribed library or prescribed archive a copy of a work or part of a work which has been lawfully made available to the public and is required by that other prescribed library or prescribed archive;

(*c*) the conditions that are to be complied with before a librarian or archivist of a prescribed library or prescribed archive makes F55**[**, or causes to be made,**]** a copy of a work in the permanent collection of the prescribed library or prescribed archive in order to preserve or replace that work in the permanent collection of that library or archive, or in the permanent collection of another prescribed library or prescribed archive;

(*d*) the conditions that are to be complied with by a librarian or archivist of a prescribed library or prescribed archive when making or supplying F55**[**, or causing to be made or supplied,**]** a copy of the whole or part of certain works which have not been lawfully made available to the public from a work in the prescribed library or prescribed archive to a person requiring the copy.

Libraries and archives: declarations.

60.—(1) Where regulations made by the Minister under *section 59* require a librarian or archivist to be satisfied as to any matter before making or supplying a copy of a work—

(*a*) the librarian or archivist concerned may rely on a declaration as to that matter by the person requesting the copy, unless the librarian or archivist is aware that it is false in a material particular, and

(*b*) in such cases as may be prescribed, the librarian or archivist shall not make or supply the copy in the absence of a declaration in such form as may be prescribed.

(2) Where a person requesting a copy of a work 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 or her—

(*a*) he or she shall be liable for infringement of copyright as if he or she had made the copy, and

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

Copying by librarians or archivists: articles in periodicals.

61.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply a copy of an article or the contents page in a periodical without infringing any copyright in the article, the contents page or in any illustrations accompanying the article or the contents page or in the typographical arrangement.

(2) A copy made under *subsection (1)* shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for the purposes of F56**[**education, research**]** or private study and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of the same article unless the person satisfies the librarian or archivist that the previous copy has been lost, stolen, discarded or destroyed or a reasonable period of time has elapsed, and that person shall not be furnished with more articles from a volume of a periodical than the number of issues that comprise that volume or 10 per cent of the volume, whichever is the greater.

(3) In this section, "article" includes an item of any description in a periodical with the exception of the table of contents.

Copying by librarians or archivists: parts of works lawfully made available to public.

62.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply a copy of part of a work (other than an article or the contents page in a periodical) which has been lawfully made available to the public without infringing any copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.

(2) A copy made under *subsection (1)* shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for the purposes of F57**[**education, research**]** or private study and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of the same material unless the person satisfies the librarian or archivist that the previous copy has been lost, stolen, discarded or destroyed or a reasonable period of time has elapsed, and that person shall not be furnished with a copy of more than a reasonable proportion of any work.

Multiple copying.

63.—(1) A copy of a work shall not be supplied under *section 61* or *62* to more than 3 persons whose requirements are related to any similar requirement of any other person.

(2) For the purposes of *subsection (1)*—

(*a*) the requirements of persons shall be deemed to be similar where the requirements are for copies of substantially the same material at approximately the same time and for substantially the same purpose, and

(*b*) the requirements of persons shall be deemed to be related where those persons receive F58**[**education**]** to which the material is relevant at the same time and place.

Copying by librarians or archivists: supply of copies to other libraries and archives.

64.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply to another prescribed library or prescribed archive a copy of—

(*a*) a periodical or articles or the contents page contained therein, or

(*b*) the whole or part of a work,

which has been lawfully made available to the public, without infringing any copyright in the periodical, in the article, in the contents page or in the work, in any illustrations accompanying the periodical, the article, the contents page or the work or in the typographical arrangement.

(2) *Subsection (1)* shall not apply where, at the time the copy is made, the librarian or archivist making it could, by reasonable enquiry, obtain the consent of a person entitled to authorise the making of the copy.

Copying by librarians or archivists: replacement copies of works.

65.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make a copy of a work in the permanent collection of the library or archive in order—

(*a*) to preserve or replace that work by placing the copy in the permanent collection of that library or archive in addition to or in place of that work, or

(*b*) to replace in the permanent collection of another prescribed library or prescribed archive a work which has been lost, destroyed or damaged,

without infringing the copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.

(2) This section shall only apply where it is not reasonably practicable to purchase a copy of the work concerned for the purposes of *subsection (1)*.

Copying by librarians or archivists for certain purposes.

66.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make F59**[**, or cause to be made,**]** a copy of a work in the permanent collection of the library or archive—

(*a*) for the purposes of obtaining insurance cover for the works concerned;

(*b*) for purposes of security;

(*c*) for the purposes of compiling or preparing a catalogue F59**[**(including a published catalogue relating to an exhibition)**]**;

(*d*) for exhibition in the library or archive; or

(*e*) for the purposes of informing the public of an exhibition,

without infringing any copyright in the work, in any illustrations accompanying the work, or in the typographical arrangement.

F60**[**(2) This section shall apply to copying—

(*a*) conducted for the curatorial purposes referred to in *subsection (1)*,

(*b*) to an extent reasonably justified by the non-commercial purpose to be achieved, and

(*c*) accompanied by a sufficient acknowledgement.**]**

Copying by librarians or archivists: certain works not lawfully made available to public.

67.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply a copy of a work or part of a work which has not been lawfully made available to the public from any work in the permanent collection of the library or archive without infringing the copyright in the work or in any illustrations accompanying the work or in the typographical arrangement.

(2) This section shall not apply where the copyright owner has prohibited copying of the work and at the time the copy is made the librarian or archivist making the copy knew, or ought to have been aware of, that fact.

(3) A copy made under *subsection (1)* shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for the purposes of F61**[**education, research**]** or private study and he or she will not use it for any other purpose and that person shall not be furnished with more than one copy of that work or part of that work.

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

68.—Where a work of cultural or historical importance or interest may not lawfully be exported from the State unless a copy of it is made and deposited in a library, archive or other institution designated by the Minister for Arts, Heritage, Gaeltacht and the Islands under section 50 of the National Cultural Institutions Act, 1997, it shall not be an infringement of copyright to make that copy.

F62**[**Format shifting by librarians or archivists

68A.—(1) Subject to *subsection (2)*, it is not an infringement of the rights conferred by this Part where the librarian or archivist of a prescribed library or prescribed archive makes, or causes to be made, a copy of a work, in the permanent collection of the library or archive, in a different form to that which the copy takes if—

(*a*) that librarian or archivist lawfully uses the means used to make the copy, and

(*b*) the copy is made solely for preservation or archival purposes where those purposes are neither directly nor indirectly commercial.

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

(*a*) the work being copied is an infringing copy, and

(*b*) the librarian or archivist making the copy, or causing it to be made, did not have reasonable grounds for believing that the work was not an infringing copy.**]**

F63**[**(3) Any contractual provisions contrary to this section shall be unenforceable.**]**

Copying by librarians or archivists: exemptions.

69.—F64**[**...**]**

F65**[**Fair dealing by librarians and archivists

69A.—(1) Without prejudice to the generality of *section 50(1)*, the communication, by the librarian or archivist of a prescribed library or prescribed archive, to members of the public of copies of works in the permanent collection of the library or archive, by dedicated terminals on the premises of the library or archive, shall constitute fair dealing with the works for the purposes of that section where the communication is—

(*a*) undertaken for the sole purpose of education, teaching, research or private study, and

(*b*) accompanied by a sufficient acknowledgement.

(2) Without prejudice to the generality of *section 50(1)*, the brief and limited display of a copy of a work—

(*a*) either—

(i) in a prescribed library or prescribed archive or by the librarian or archivist of a prescribed library or prescribed archive, or

(ii) during the course of a public lecture given in a prescribed library or prescribed archive or given by the librarian or archivist of a prescribed library or prescribed archive,

(*b*) undertaken for the sole purpose of education, teaching, research or private study where such purpose is neither directly nor indirectly commercial, and

(*c*) accompanied by a sufficient acknowledgement,

shall constitute fair dealing with the work for the purposes of *section 50(1)*.**]**

Copying by librarians or archivists: infringing copy.

70.—Where a copy which would otherwise be an infringing copy is made under *section 61, 62, 64, 65, 67* F66**[**, *68, 68A* or *69A*]** but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

F67**[**Orphan works.

70A.—(1) The copyright in a relevant work in the collection of a relevant body is not infringed by a relevant body where—

(*a*) the relevant work is an orphan work within the meaning of Regulation 4 of the Regulations of 2014, and

(*b*) in accordance with Regulation 8 of the Regulations of 2014, the relevant body—

(i) makes that orphan work available to the public, or

(ii) carries out an act of reproduction of that orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(2) The copyright in a relevant work in the collection of a relevant body is not infringed by a relevant body where—

(*a*) the relevant work is a relevant work to which Regulation 4(2) of the Regulations of 2014 applies,

(*b*) the relevant body has, pursuant to Regulation 4(3) of the Regulations of 2014, been been given an authorisation referred to in that Regulation, and

(*c*) in accordance with Regulation 9 of the Regulations of 2014, the relevant body—

(i) makes that orphan work available to the public, or

(ii) carries out an act of reproduction of that orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(3) In this section—

"Regulations of 2014" means the European Communities (Certain Permitted Uses of Orphan Works) Regulations 2014;

"relevant body" has the meaning assigned to it by the Regulations of 2014;

"relevant work" has the meaning assigned to it by the Regulations of 2014.**]**

Public Administration

Parliamentary and judicial proceedings.

71.—(1) The copyright in a work is not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting those proceedings.

(2) *Subsection (1)* shall not be construed as authorising the copying of a work which is itself a report of the proceedings which has been lawfully made available to the public.

Statutory inquiries.

72.—(1) The copyright in a work is not infringed by anything done for the purposes of a statutory inquiry or for the purpose of reporting any such inquiry.

(2) *Subsection (1)* shall not be construed as authorising the copying of a work which is itself a report of the proceedings which has been lawfully made available to the public.

(3) The copyright in a work is not infringed by the making available to the public of copies of a report of a statutory inquiry containing the work or materials from the report.

Copying of material in public records.

73.—Any material which is comprised in records which are open to public inspection may be copied, and a copy may be supplied to any person, without infringement of copyright.

Material open to public inspection or on statutory register.

74.—(1) Without prejudice to the generality of *section 73*, where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, the copyright in the material is not infringed by the copying, for a purpose which does not involve the making available to the public of copies, of so much of the material as contains factual information of any description, by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register.

(2) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, the copyright in the material is not infringed by the copying or making available to the public of copies of that material, for the purpose of enabling the material to be inspected at another time or place, or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed, by or with the authority of the person required to make the material open to public inspection or, as the case may be, he person maintaining the register.

(3) Where material is made available to the public under this section the person granting access to the material shall ensure that it bears a mark clearly indicating that it is provided for the purpose of inspection and that no other use of the material may be made without the licence of the copyright owner.

(4) Material may not be provided under this section unless the person granting access to the material has obtained from the person requesting the material a declaration, in such form as may be prescribed, indicating that the material is required for the sole purpose of enabling the material to be inspected at another time or place or to otherwise facilitate the exercise of the right of public inspection.

(5) Where material which is open to public inspection pursuant to a statutory requirement, or is on a statutory register, contains information about matters of general, scientific, technical, commercial or economic interest, the copyright in the material is not infringed by the copying or making available to the public of copies of that material for the purpose of disseminating that information, by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register.

(6) The Minister may prescribe the conditions which are to be complied with before material is made available to the public under this section.

(7) The Minister may by order provide that *subsections (1)* to *(5)* apply—

(*a*) to material made open to public inspection by—

(i) an international organisation specified in the order, or

(ii) a person specified in the order who has functions in the State under an international agreement to which the State is a party,

or

(*b*) to a register maintained by an international organisation specified in the order,

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

Works communicated to Government or Oireachtas.

75.—(1) Where a work has been communicated to the Government or either or both of the Houses of the Oireachtas for any purpose, by or with the licence of the copyright owner, and any fixation of the work or any thing containing the work is owned by, or is in the possession, custody or control of, the Government or either or both of the Houses of the Oireachtas, the Government or either or both of the Houses of the Oireachtas may copy the work, make available to the public copies of the work, or cause the work to be copied or made available to the public for the purpose for which the work was communicated to them, or for any related purpose which could reasonably have been anticipated by the copyright owner, without infringing the copyright in the work.

(2) The Government or either or both of the Houses of the Oireachtas shall not make available to the public copies of a work referred to in *subsection (1)* or cause the work to be copied or made available, under this section, where the work has previously been lawfully made available to the public otherwise than under this section.

Acts done under statutory authority.

76.—(1) Where the undertaking of a particular act is specifically authorised by an enactment then, unless the enactment provides otherwise, the undertaking of that act shall not infringe the copyright in a work.

(2) Nothing in this section shall be construed as excluding any defence available under any enactment.

Savings.

77.—(1) Nothing in this Act shall affect any right or privilege of the Government subsisting otherwise than by virtue of an enactment, and nothing in this Act shall affect any right or privilege of the Government or of any other person under any

enactment, except in so far as that enactment is expressly repealed, amended or modified by this Act.

(2) Nothing in this Act shall affect the right of the Government or of any person deriving title from the Government to sell, use or otherwise deal with articles forfeited under the laws relating to customs or excise, including any article so forfeited by virtue of this Act or of any enactment repealed by this Act.

(3) Nothing in this Act shall affect the operation of any rule of equity relating to breaches of trust or confidence.

(4) Subject to *subsections (1)* to *(3)*, no copyright or right in the nature of copyright, shall subsist otherwise than by virtue of this Act or of some other enactment in that behalf.

Designs

Acts done in reliance on registration of design.

78.—(1) The copyright in a work is not infringed by anything done—

(*a*) pursuant to an assignment or licence made or granted by a person registered under F68**[**the Industrial Designs Act 2001**]** as the proprietor of a corresponding design, and

(*b*) in good faith and in reliance on such registration and without notice of any proceedings for the cancellation of the registration or for rectifying the relevant entry in the register of designs.

(2) In *subsection (1)* "corresponding design", in relation to a work, means a design within the meaning of F68**[**the Industrial Designs Act, 2001**]** which, if applied to an article, would produce anything which would be treated for the purposes of this Part as a copy of the work.

F69**[**Design documents and models.

78A.—(1) The copyright in a design document or model recording or embodying a design for anything other than an artistic work or a typeface is not infringed by the making of a product to the design or the copying of a product made to the design.

(2) The copyright in a design document or a model recording or embodying a design for anything other than an artistic work or a typeface is not infringed by the issue to the public, or the inclusion in a film, broadcast or cable programme service, of anything the making of which is, by virtue of *subsection (1)*, not an infringement of that copyright.

(3) In this section and *section 78B*—

"design" means the design of any aspect of the shape or contours (whether internal or external) of the whole or part of a product, other than surface decoration;

"design document" means any record of a design, whether in the form of a drawing, a written description, a photograph, storing the work in any medium or otherwise;

"product" means any industrial or handicraft item, including parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographical typefaces, but not including computer programmes; and

"complex product" means a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product.**]**

F70**[**Effect of exploitation of design derived from artistic work.

78B.—F71**[**...**]]**

F72**[**Transitional provisions for *section 78B*

78C.—(1) An act to which *subsection (2)* applies is not an infringement of the copyright in an artistic work if—

(*a*) that act is done pursuant to a contract entered into before the relevant date, and

(*b*) that act, if it were done immediately before the relevant date, would not, by virtue of *section 78B*, have been such an infringement.

(2) An act to which this subsection applies is any of the following acts done, in relation to an artistic work, during the 6 months period immediately following and including the relevant date:

(*a*) the copying of the work;

(*b*) the provision of means for making a copy of the work;

(*c*) the importation into the State of a copy of the work.

(3) An act to which *subsection (4)* applies is not an infringement of the copyright in an artistic work if that act, if it were done on the day immediately before the relevant date, would not, by virtue of *section 78B*, have been such an infringement.

(4) An act to which this subsection applies is any of the following acts done, in relation to an artistic work, during the 6 months period immediately following and including the relevant date:

(*a*) the issuing or selling, or renting or lending, to the public of a copy of the work that was made in, or imported into, the State—

(i) before the relevant date, or

(ii) during that 6 months period pursuant to a contract entered into before the relevant date;

(*b*) the communication to the public of that work in connection with anything done in reliance on *paragraph (a).*

(5) In this section, "relevant date" means the date referred to in section 1(7) of the Copyright and Other Intellectual Property Law Provisions Act 2019.**]**

Exception from protection of copyright in certain works.

79.—(1) The making of an object of any description which is in three dimensions shall not be taken to constitute an infringement of the copyright in a work in two dimensions, if the object would not appear, to a person who is not an expert in relation to objects of that description, to be a reproduction of the work.

(2) F73**[**...**]**

Computer Programs

Back-up copies of computer programs.

80.—(1) It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to make a back-up copy of it which it is necessary for him or her to have for the purposes of his or her lawful use.

(2) For the purposes of this section and *sections 81* and *82*, a person is a "lawful user" of a computer program where, whether under a licence to undertake any act restricted by the copyright in the program or otherwise, he or she has a right to use the program, and "lawful use" shall be construed accordingly.

Lawful copies of computer programs.

81.—(1) It is not an infringement of the copyright in a computer program for a lawful user—

(*a*) to make a permanent or temporary copy of the whole or a part of the computer program by any means or in any form, or

(*b*) to make a translation, adaptation, arrangement or any other alteration of the computer program and to copy the results thereof,

to achieve the interoperability of an independently created computer program with other programs where the following conditions are complied with:

(i) those acts are performed by the lawful user or on his or her behalf by a person authorised to do so;

(ii) the information necessary to achieve interoperability has not previously been available to the person referred to in *subparagraph (i)*; and

(iii) those acts are confined to the parts of the original program which are necessary to achieve interoperability.

(2) *Subsection (1)* shall not permit the information obtained through its application—

(*a*) to be used other than to achieve the interoperability of the independently created computer program,

(*b*) to be given to persons other than those referred to in that subsection, except where necessary for the interoperability of the independently created computer program, or

(*c*) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

Exceptions to infringement of copyright in computer programs.

82.—(1) It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to make a permanent or temporary copy of the whole or a part of the program by any means and in any form or to translate, adapt or arrange or in any other way alter the computer program where such actions are necessary for the use of the program by the lawful user in accordance with its intended purpose, including error correction.

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

F74**[**(3) It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to reproduce, or extract from, the computer program for the purposes of text and data mining where the F75**[**rightholder**]** has not expressly reserved in an appropriate manner, in accordance with *subsection (5)*, the use of the computer program for reproduction or extraction for the purposes of text and data mining.

(4) Reproductions and extractions made pursuant to *subsection (3)* may be retained for as long as is necessary for the purposes of text and data mining.

(5) For the purposes of *subsection (3)*, F75**[**a rightholder**]** reserves the use of a computer program for reproduction or extraction for the purposes of text and data mining in an appropriate manner where the reservation concerned –

(*a*) is machine-readable in the case of content made publicly available online, including metadata and terms and conditions of a website or a service, and

(*b*) in case of content not made publicly available online, is clearly communicated to all persons who have lawful access to it.**]**

F76**[**Cultural Heritage Institutions – computer programs

82A.—(1) It is not an infringement of the copyright in a computer program for a cultural heritage institution to make available, for non-commercial purposes, out-of-commerce works that are permanently in its collections, where—

(*a*) no collective management organisation exists that fulfils the conditions set out in Regulation 8(1)(a) of the European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021 in relation to that computer program right,

(*b*) it is accompanied by sufficient acknowledgment, and

(*c*) such work is only made available on non-commercial websites.

(2) An owner of copyright in a computer program may exclude his or her work from the use referred to in *subsection (1)* at any time by notifying the relevant cultural heritage institution by electronic or other means and by including the following in the notice:

(*a*) notification that the owner is asserting his or her right pursuant to this section;

(*b*) sufficient details of the work to enable it to be identified and removed from public display.

(3) Upon receipt of a written request in accordance with *subsection (2)*, a cultural heritage institution shall terminate its use of the work or works referred to in that written request within 4 weeks of receiving it.

(4) This section shall not apply to sets of out-of-commerce works or other subject matter if, on the basis of the reasonable effort referred to in *subsection (5)*, there is evidence that such sets predominantly consist of —

(*a*) works, other than cinematographic or audiovisual works, first published or, in the absence of publication, first broadcast in a third country,

(*b*) cinematographic or audiovisual works, of which the producers have their headquarters or habitual residence in a third country, or

(*c*) works of third country nationals, where after a reasonable effort no Member State or third country could be determined pursuant to *paragraphs (a)* and *(b)*.

(5) At least 6 months before the work used under *subsection (1)* is distributed, communicated to the public or made available to the public, cultural heritage institutions, collective management organisations and library authorities, within the meaning of section 32 of the Local Government Act 1994, shall provide the following information on the Out-of-Commerce Works Portal established by the European Union Intellectual Property Office:

(*a*) the title, where possible, the author, and a brief summary of the contents of the out-of-commerce work that is proposed to be used in accordance with *subsection (1)*;

(*b*) the information about the options available to rightholders under this section;

(*c*) as soon as it is available and where relevant, information on the parties to the licence, the territories covered and the uses authorised under the license.

(6) For the purposes of *subsection (1)*, a work can be considered to be permanently in the collections of a cultural heritage institution where it is owned or permanently held by that institution, for example as a result of a transfer of ownership or a licence agreement, legal deposit obligations or permanent custody arrangements.**]**

Original Database

Access to or use of original database.

83.—It is not an infringement of the copyright in an original database for a person who has the right to use the database or any part thereof, whether under a licence to undertake any of the acts restricted by the copyright in the original database or otherwise, to undertake, in the exercise of that right, anything which is necessary for the purposes of access to or use of the contents of the database or part thereof.

Typefaces

Use of typefaces: printing.

84.—(1) It is not an infringement of the copyright in a work which consists of the design of a typeface—

(*a*) to use the typeface in the ordinary course of typing, composing text, type-setting 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 subsection applies notwithstanding that an article is used which is an infringing copy of the work.

(2) A person infringes the copyright in a work consisting of the design of a typeface where he or she, without the licence of the copyright owner—

(*a*) makes,

(*b*) sells, rents or lends, or offers or exposes for sale, rental or loan, exhibits in public or distributes,

(*c*) imports into the State, or

(*d*) has in his or her possession, custody or control, for the purpose of sale, rental or loan, or offering or exposing for sale, rental or loan, or for exhibition in public or distribution,

an article specifically designed or adapted for producing material in the particular typeface, knowing or having reason to believe that the article has been or is to be used to make copies that infringe the copyright in the work, including copies which would not be infringing copies under *subsection (1)*.

Articles for producing materials in particular typefaces.

85.—(1) This section applies to the copyright in a 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 expiration of F77**[**25 years**]** from the end of the calendar year in which the articles referred to in *subsection (1)* are marketed for the first time, 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 the copyright in the work.

Works in Electronic Form

Transfer of copies of work in electronic form.

86.—(1) This section applies where a copy of a work in electronic form has been purchased on terms which expressly or impliedly allow the purchaser to copy the work, or to adapt it or make copies of an adaptation, in connection with his or her use of the work.

(2) Where 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 conditions on which a transferee may undertake the acts which the purchaser was permitted to undertake,

then, any acts which the purchaser was permitted to undertake may also be undertaken by a transferee without infringement of the copyright, but any copy or adaptation or copy of an adaptation made by the purchaser which is not also transferred shall be treated as an infringing copy for those purposes and for all subsequent purposes.

(3) *Subsection (2)* applies where the original purchased copy is no longer usable and that which is transferred is a further copy used in its place.

(4) This section shall apply on a second and subsequent transfer in like manner as to the first transfer to a purchaser and references to the purchaser shall be construed as references to a second or subsequent transferee.

Miscellaneous Matters Relating to Copyright

F78[Temporary acts of reproduction.

87.—(1) It is not an infringement of the rights conferred by this Part to undertake or conduct temporary acts of reproduction which acts are transient or incidental and which are an integral and essential part of a technological process and whose sole purpose is to enable—

(*a*) a transmission in a network between third parties by an intermediary, or

(*b*) a lawful use, of a work or other subject-matter to be made, and which acts have no independent economic significance.

(2) Where a copy, which would otherwise be an infringing copy, is made under this section and is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes.]

Anonymous or pseudonymous works acts permitted.

88.—(1) The copyright in a work is not infringed by an act undertaken when, or pursuant to arrangements made when—

(*a*) it is not possible to ascertain the identity of the author of the work by reasonable enquiry, and

(*b*) it is reasonable to assume that the copyright has expired.

(2) Where a work is a work of joint authorship the reference in *subsection (1)* to the possibility of ascertaining the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors.

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

F79[**89.**—(1)(*a*) *Paragraph (b)* applies where a record of spoken words (including political speeches and extracts from public lectures or similar works) is made, in writing or otherwise, for the purposes of—

(i) reporting current events, or

(ii) broadcasting, including in a cable programme service, or otherwise communicating to the public, the record.

(*b*) Subject to compliance with the conditions specified in *subsection (2)*, it is not an infringement of the rights conferred by this Part—

(i) to use the record or material taken from it for the purposes referred to in *paragraph (a)*, or

(ii) to copy the record or material taken from it and use the copy for the purposes referred to in *paragraph (a)*.

(2) The conditions referred to in *subsection (1)(b)* are:

(*a*) that the record is a direct record of the spoken words;

(*b*) that the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe the copyright in the work;

(*c*) that the use made of the record or material taken from it was not prohibited by or on behalf of the speaker or copyright owner before the record was made;

(*d*) that the use made of the record or material taken from it is by or with the authority of a person who is lawfully in possession of the record;

(*e*) that the use made of the record or material taken from it is accompanied by a sufficient acknowledgement.

(3) Where a record which would otherwise be an infringing copy is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.**]**

Public reading or recitation of works.

90.—(1) The reading or recitation in public by one person of any reasonable extract from a literary or dramatic work which has been lawfully made available to the public, where accompanied by a sufficient acknowledgement, shall not infringe the copyright in the work.

(2) The copyright in a work is not infringed by the making of a fixation, or the broadcasting or inclusion in a cable programme service, of a reading or recitation which by virtue of *subsection (1)* does not infringe the copyright in the work.

(3) Where a copy, which would otherwise be an infringing copy, is made under this section and is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes.

Abstracts of scientific or technical articles.

91.—Where an article on a scientific or technical subject is lawfully made available to the public in a periodical accompanied by an abstract indicating the contents of the article, it is not an infringement of the copyright in the abstract or in the article to copy the abstract or to make available to the public copies of the abstract or to include the abstract in any other work.

Fixations of performances of works of folklore.

92.—(1) A fixation of a performance of an anonymous work which has not been lawfully made available to the public may be made for the purpose of including it in an archive maintained by a designated body without infringing the copyright in the work where at the time the fixation is made—

(*a*) the making of the fixation does not infringe any other copyright, and

(*b*) the making of the fixation is not prohibited by any performer.

(2) A copy of a fixation made under *subsection (1)* and included in an archive maintained by a designated body may, subject to compliance with the conditions referred to in *subsection (3)*, be made and supplied by the archivist without infringing the copyright in the fixation or the works included in it.

(3) The conditions referred to in *subsection (2)* are—

(*a*) that a copy may not be supplied other than to a person who satisfies the archivist that he or she requires the copy for the purposes of F80**[**education, research**]** or private study and he or she will not use it for any other purpose, and

(*b*) that a person shall not be furnished with more than one copy of the same fixation.

(4) In this section, "designated body" means a body designated for the purposes of this section by order of the Minister who shall not designate a body unless he or she is satisfied that the body is not established or conducted for profit.

Representation of certain artistic works on public display.

93.—(1) This section applies to the copyright in—

(*a*) buildings, and

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

(2) The copyright in a work to which this section applies is not infringed by—

(*a*) making a painting, drawing, diagram, map, chart, plan, engraving, etching, lithograph, woodcut, print or similar thing representing it,

(*b*) making a photograph or film of it, or

(*c*) broadcasting or including in a cable programme service, an image of it.

(3) The copyright in a work to which this section applies is not infringed by the making available to the public of copies of anything the making of which is not, by virtue of this section, an infringement of the copyright in the work.

Advertising sale of artistic work.

94.—F81**[**(1) It is not an infringement of the copyright in an artistic work to copy it, or to make available to the public copies of it, for the purpose of advertising the sale or public exhibition of the work if the copying is done, and the copies are used—

(*a*) only to an extent reasonably justified for achieving that purpose, and

(*b*) for no other commercial purpose.**]**

(2) Where a copy which would otherwise be an infringing copy is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

Making of subsequent works by same artist.

95.—Where the author of an artistic work is not the copyright owner, it is not an infringement of the copyright in the work to copy the work in making another artistic work, where the author does not repeat or imitate the main design of the earlier work.

Reconstruction of buildings.

96.—Where anything is done for the purposes of reconstructing a building it is not an infringement of the copyright in the building or in any drawings or plans in accordance with which the building was constructed by or with the licence of the copyright owner.

Playing or showing of sound recordings, broadcasts and cable programmes in certain premises.

97.—(1) Subject to *subsection (2)*, it is not an infringement of the copyright in a sound recording, broadcast or cable programme to cause a sound recording, broadcast or cable programme to be heard or viewed where it is heard or viewed—

(*a*) in part of the premises where sleeping accommodation is provided for the residents or inmates, and

(*b*) as part of the amenities provided exclusively or mainly for residents or inmates.

(2) *Subsection (1)* does not apply in respect of any part of premises to which *subsection (1)* applies where there is a discrete charge made for admission to the part of the premises where a sound recording, broadcast or cable programme is to be heard or viewed.

Playing of sound recordings for clubs, societies, etc.

98.—(1) Subject to compliance with the conditions specified in *subsection (2)*, it is not an infringement of the copyright in a sound recording to play it as part of the private activities of or for the benefit of a club, society or other organisation.

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

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

(*b*) that the proceeds of any charge for admission to the place where the sound recording is to be heard are applied solely for the purposes of the club, society or other organisation.

(3) *Subsection (1)* shall not apply in the case of any club, society or other organisation where a charge is made for admission to the place where the sound recording is heard and any of the proceeds of the charge are applied otherwise than for the purposes of the club, society or other organisation.

Copying for purpose of broadcast or cable programme.

99.—(1) Where, by virtue of a licence or assignment of copyright, a person is authorised to broadcast or include in a cable programme service a work or an adaptation of a work, he or she shall be deemed to be licensed by the owner of the copyright in the work to copy or authorise the copying of that work by means of his or her own facilities for the purposes of his or her own broadcast or cable programme.

(2) It shall be a condition of a licence conferred by virtue of *subsection (1)* that any copy resulting from the exercise of rights granted by the licence shall not be used for any purpose other than the broadcast or cable programme and shall be destroyed within 3 months of first being used for broadcasting or included in a cable programme service.

(3) A copy of a work made under this section shall be treated as an infringing copy where it is used for purposes other than broadcasting or inclusion in a cable programme service or where it is used after the expiration of 3 months from the date on which it is first used for broadcasting or included in a cable programme service.

F82**[**(4) Where, by virtue of *subsection (1)*, a person (in this subsection referred to as "the licensee") is deemed to be licensed by the owner of the copyright in a work to copy or authorise the copying of that work by means of his or her own facilities, such facilities shall include those of a person acting on behalf of and under the responsibility of the licensee.**]**

Recording for purposes of supervision and control of broadcasts and cable programmes.

100.—(1) The copyright in a work is not infringed by the making or use by an authorised broadcaster or authorised cable programme service provider, for the purpose of maintaining supervision and control over programmes broadcast by them or included by them in a cable programme service, of fixations of those programmes.

(2) The copyright in a work is not infringed by any use made by a body established by the State to regulate the operations of broadcasters or cable programme service providers of any fixations of broadcasts or cable programmes.

Recording for purposes of time-shifting.

101.—(1) The making for private and domestic use of a fixation of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at another time or place shall not infringe the copyright in the broadcast or cable programme or in any work included in such a broadcast or cable programme.

(2) Subject to *subsection (3)*, the making by an establishment for private and domestic use of a fixation of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at another time or place shall not infringe the copyright in the broadcast or cable programme or in any work included in such a broadcast or cable programme.

(3) The Minister may specify by order establishments for the purposes of this section.

(4) Where a fixation which would otherwise be an infringing copy is made under this section and is subsequently sold, rented or (otherwise than to a person's family member or friend for private and domestic purposes) lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes.

Photographs of television broadcasts or cable programmes.

102.—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 of a copy of such a photograph, shall not infringe the copyright in the broadcast or cable programme or in any film included in it.

Reception and retransmission of broadcasts in cable programmes services.

103.—F83**[**...**]**

F84**[**Definitions - *sections 103A* to *104B*

103A.—In this section and *sections 104* to *104B*—

"designated body" means a designated body as defined in *section 104(3)*;

"relevant work" means a work—

(*a*) which is not accessible to a person with a disability because of that disability, and

(*b*) in respect of which a copy can be made and that copy then modified so that the modified copy of the work is accessible to that person.**]**

F85**[**Transmission of programmes by direct injection

103AA.—(1) This section applies when a broadcasting organisation transmits by direct injection its programme-carrying signals to a network operator where—

(*a*) the broadcasting organisation does not make the broadcast, and

(*b*) the network operator makes the broadcast.

(2) Subject to *subsection (3)*, the broadcasting organisation and the network operator referred to in *subsection (1)* shall be deemed to be participating in a single act of communication to the public and the parties shall only undertake that communication with the authorisation of the rightholder.

(3) If an authorisation concerning a transmission by direct injection, to which this section would apply, is in force on 7 June 2021, this section shall not apply to that authorisation until 7 June 2025.

(4) In this section—

"direct injection" means a technical process by which a broadcasting organisation transmits its programme-carrying signals in such a way that the programme-carrying signals are not accessible to the public during that transmission;

"network operator" means the operator of an electronic communications network (within the meaning of the Communications Regulation Act 2002).**]**

Provision of modified works.

104.—F86**[**(1) Subject to *subsection (1A)* and *section 104A(1)*, a designated body may do any of the following in respect of a relevant work without infringing the copyright in that work:

(*a*) make, or cause to be made, a copy of the work for the purpose of modifying the copy;

(*b*) supply the modified copy of the work to a person with a disability;

(*c)* supply the modified copy of the work to another designated body;

(*d*) receive a modified copy of the work from—

(i) another designated body, or

(ii) a person with a disability;

(*e*) supply the modified copy of the work that it has received under *paragraph (d)* to—

(i) a person with a disability, or

(ii) another designated body.

(1A) *Subsection (1)* shall not apply unless the modified copy concerned of the relevant work—

(*a*) bears or otherwise incorporates an express statement to the effect that the copy has been made under this section, and

(*b*) is accompanied by a sufficient acknowledgement.

(1B) (*a*) Subject to *section 104A(1)*, a use to which *paragraph (b)* applies may be made of a relevant work by a person with a disability without infringing the copyright in that work provided that the use is for the benefit of the person, is directly related to the disability, is for a non-commercial purpose and is made only to the extent required by the nature of the disability.

(*b*) A use to which this paragraph applies is any of the following:

(i) make, or cause to be made, a copy of the relevant work for the purpose of modifying the copy;

(ii) access a modified copy of the work which has been modified pursuant to *subparagraph (i)* or supplied pursuant to *subsection (1)*;

(iii) supply such modified copy to a designated body.**]**

(2) Where a copy which would otherwise be an infringing copy is made under this section, but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

(3) In this section, "designated body" means a body designated for the purposes of this section by order of the Minister who shall not designate a body unless he or she is satisfied that the body is not established or conducted for profit.

F87**[**Circumstances in which *section 104* shall not apply

104A.—(1) *Section 104* shall not apply to a relevant work where—

(*a*) there is a licensing scheme certified under *section 173* that is applicable to *section 104* in so far as that work is concerned, and

(*b*) the designated body or person with a disability making, or causing to be made, a modified copy of that work knew or ought to have been aware of the existence of the licensing scheme.

(2) Any terms of a licence granted on foot of the licensing scheme referred to in *subsection (1)* that purports to restrict the obligation imposed under *section 104B(1)* on the publisher of that work shall be unenforceable.**]**

F88**[**Electronic form of relevant work

104B.—(1) Subject to *subsection (3)*, the publisher of a relevant work first published in the State on or after the commencement of section 27 of the Copyright and Other Intellectual Property Law Provisions Act 2019 shall make or cause to be made at least one electronic form of the work which complies with the requirements of *subsection (2)* unless the publisher already has, in the publisher's possession, custody or control, at least one electronic form of the work which complies with those requirements.

(2) The electronic form of the relevant work shall enable copies of the work to be made—

(*a*) without undue difficulty,

(*b*) which are easily navigated, and

(*c*) which are capable of being modified.

(3) A designated body may make a relevant request of the publisher of a relevant work to which *subsection (1)* applies to deliver, within one month of the publisher's receipt of the request, the relevant material in respect of the work, and the publisher shall, subject to *subsection (4)*, comply with that request.

(4) The publisher of a relevant work who is the subject of a relevant request may, by notice in writing given to the designated body which made the request, decline to comply with the request until the publisher receives a payment to cover the reasonable costs of the publisher that would be incurred in complying with the request.

(5) Where a publisher fails to comply with this section he or she shall be guilty of an offence and shall be liable on summary conviction to a class E fine.

(6) In this section—

"relevant request" means a request in writing that the publisher deliver, in the manner specified in the request, the relevant material—

(*a*) in such digital or electronic or other technological form specified in the request and to the address (which may be an electronic address) specified in the request, or

(*b*) by permitting the designated body to access the relevant material;

"relevant material" means the electronic form of a relevant work and any other material required to ensure that such electronic form complies with *subsection (2)*.**]**

Recording for archival purposes.

105.—(1) A fixation of a broadcast or a cable programme of a designated class or a copy of such a fixation may be made for the purpose of including it in an archive maintained by a designated body without infringing the copyright in the broadcast or cable programme or in any work included therein.

(2) In this section—

“designated body” means a body designated for the purposes of this section by order of the Minister;

“designated class” means a class designated for the purposes of this section by order of the Minister.

(3) The Minister shall not designate a body unless he or she is satisfied that the body is not established or conducted for profit.

Adaptation of a work.

106.—It is not an infringement of the copyright in a work to make an adaptation of the work by any act which may otherwise be done without infringing the copyright in a work under this Chapter.

CHAPTER 7

Copyright: Moral Rights

Paternity right.

107.—(1) Subject to the exceptions specified in *section 108*, the author of a work shall have the right to be identified as the author and that right shall also apply in relation to an adaptation of the work.

(2) Where an author uses a pseudonym, initials or other form of identification, that form shall be used to identify his or her work.

(3) The right conferred by this section shall be known and in this Part referred to as the “paternity right”.

Exceptions to paternity right.

108.—(1) The paternity right is not infringed by anything done under *section 52, 53(5), 71, 72* or *88*.

(2) The paternity right shall not apply to anything done by or with the authority of the copyright owner where the copyright in the work originally vested in an employer under *section 23*.

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

(4) The paternity right shall not apply to a work made for the purposes of—

(*a*) a newspaper or periodical, or

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

or in relation to a work made available to the public with the licence of the author for those purposes.

(5) The paternity right shall not apply in relation to a work—

(*a*) in which Government or Oireachtas copyright subsists, or

(*b*) in which the copyright originally vested in a prescribed international organisation,

unless the author has previously been identified as the author in or on copies of the work which have been lawfully made available to the public.

Integrity right.

109.—(1) Subject to the exceptions and qualifications specified in *sections 110* and *111*, the author of a work shall have the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the work which would prejudice his or her reputation and that right shall also apply in relation to an adaptation of the work.

(2) The right conferred by this section applies to any addition to, deletion from or alteration to or adaptation of parts of a work resulting from any previous addition to, deletion from or alteration to or adaptation of a work or parts of a work by a person other than the author, where those parts are attributed to, or are likely to be regarded as the work of, the author.

(3) The right conferred by this section shall be known and in this Part referred to as the "integrity right".

Exceptions to integrity right.

110.—(1) Subject to *subsections (2)* and *(3)*, the integrity right shall not apply to—

(*a*) a work made for the purpose of reporting current events;

(*b*) a work made for the purposes of—

(i) a newspaper or periodical, or

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

or to a work made available to the public with the licence of the author for such purposes; or

(*c*) a subsequent use of a work referred to in *paragraph (b)* without any modification of the version made available to the public under that paragraph.

(2) Subject to *subsection (3)*, the integrity right is not infringed—

(*a*) by an act which under *section 51* or *88* would not infringe the copyright in a work, or

(*b*) by anything done for the purposes of—

(i) avoiding any contravention of civil or criminal law,

(ii) complying with a duty imposed by or under an enactment, or

(iii) in the case of authorised broadcasters or authorised cable programme service providers, avoiding the inclusion in a programme which is

broadcast or included in a cable programme service by those broadcasters or providers, of anything which is likely to offend public morality or which is likely to encourage or incite to crime or to lead to public disorder.

(3) *Subsection (2)(b)* shall not apply unless the author is identified at the time of the act concerned or has previously been identified in or on copies of the work which have been lawfully made available to the public and there is a sufficient disclaimer.

(4) In this Part "sufficient disclaimer", in relation to an act capable of infringing the integrity right, means a clear and reasonably prominent indication given at the time of the act, or where the author is then identified, appearing with the identification, that the work has been subjected to an action which the author has not licensed.

Qualification of integrity right in certain cases.

111.—(1) The integrity right shall be qualified in the manner specified in *subsection (2)* in respect of—

(*a*) works in which copyright originally vested in the author's employer under *section 23*,

(*b*) works in which Government or Oireachtas copyright subsists, and

(*c*) works in which copyright originally vested in a prescribed international organisation.

(2) The integrity right shall not apply to anything done in relation to works referred to in *subsection (1)* by or with the licence of the copyright owner unless the author—

(*a*) is identified at the time of the act concerned, or

(*b*) has previously been identified in or on copies of the work which have been lawfully made available to the public,

and where, in such a case, the integrity right applies, that right shall not be infringed where there is a sufficient disclaimer.

Secondary infringement of integrity right: possessing or dealing.

112.—A person infringes the integrity right where he or she—

(*a*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*b*) imports into the State, otherwise than for his or her private and domestic use,

(*c*) in the course of a business, trade or profession, has in his or her possession, custody or control, or

(*d*) makes available to the public,

a work or a copy of a work or an adaptation thereof which has, and which he or she knows or has reason to believe has, been subjected to any distortion, mutilation or other modification or other derogatory action within the meaning of *section 109*.

False attribution of work.

113.—(1) A person has the right not to have a work falsely attributed to him or her as author.

(2) The right conferred by *subsection (1)* is infringed by a person where he or she—

(*a*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*b*) imports into the State, otherwise than for his or her private and domestic use,

(*c*) in the course of a business, trade or profession, has in his or her possession, custody or control, or

(*d*) makes available to the public,

a work, or a copy of a work, in or on which there is a false attribution, knowing or having reason to believe that the attribution is false.

(3) The right conferred by *subsection (1)* is infringed by a person where he or she—

(*a*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*b*) imports into the State, otherwise than for his or her private and domestic use,

(*c*) in the course of a business, trade or profession, has in his or her possession, custody or control, or

(*d*) makes available to the public,

a work which has been altered as being the unaltered work of the author, or a copy of such a work as being a copy of the unaltered work of the author, knowing or having reason to believe that the work or the copy of the work has been altered.

(4) This section applies where a work is falsely represented as being an adaptation of the work of a person in the same manner as it applies where a work is so represented as being the work of a person.

(5) In this Part "attribution", in relation to a work, means a statement, express or implied, as to who is the author of the work.

Right to privacy in photographs and films.

114.—(1) Subject to the exceptions specified in *subsection (3)*, 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 the work or copies of the work made available to the public.

(2) Subject to *subsection (3)*, the act of making available to the public, or authorising the making available to the public, of a work or copies of a work referred to in *subsection (1)* without the authority of the person who commissions the work infringes the right conferred by *subsection (1)*.

(3) The right conferred by *subsection (1)* shall not be infringed by an act which under *section 52, 71, 72, 76* or *88* would not infringe the copyright in the work.

Duration of moral rights.

115.—(1) The paternity right, the integrity right and the right conferred by *section 114* to privacy in photographs and films shall subsist for the same period of time as the copyright in the work subsists.

(2) The right conferred by *section 113* in relation to a false attribution of a work shall subsist for 20 years after the death of the person on whom the right is conferred.

Waiver of rights.

116.—(1) Subject to *subsection (3)*, any of the rights conferred by this Chapter may be waived.

(2) A waiver made under this section shall be in writing and signed by the person waiving the right concerned.

(3) A waiver made under *subsection (1)*—

(*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 where a waiver is made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, that waiver shall be presumed

to extend to his or her licensees, successors in title or other persons claiming under them 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 referred to in *subsection (1)*.

(5) It shall not be an infringement of any of the rights conferred by this Chapter for a person to undertake any act where the person entitled to the right conferred by this Chapter has consented to the use of those rights by that other person.

Application of certain provisions to works of joint authorship and joint ownership.

117.—(1) The paternity right or the integrity right is, in the case of a work of joint authorship, a right of each joint author.

(2) A waiver made under *section 116* of the paternity right or the integrity right by one joint author shall not affect the rights of the other joint authors.

(3) The right conferred by *section 113* in relation to false attribution is infringed by—

(*a*) any false statement as to the authorship of a work of joint authorship, or

(*b*) 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 attributed.

(4) The right conferred by *section 114* to privacy in photographs and films is, in the case of a work made pursuant to a joint commission, the right of each person who commissioned the making of the work and where a waiver is made by one of them under *section 116* that waiver shall not affect the rights of the other persons.

Moral rights not assignable or alienable.

118.—The rights conferred by *Chapter 7* shall be incapable of assignment or alienation.

Transmission of moral rights on death.

119.—(1) On the death of a person entitled to the paternity right, the integrity right, or the right conferred by *section 114* to privacy in photographs and films—

(*a*) the right passes by testamentary disposition to such person as the person entitled to the right may direct,

(*b*) where there is no direction as to whom the right passes but the copyright in the work concerned forms part of an estate, the right passes to the person to whom the copyright passes, and

(*c*) where the right does not pass under *paragraph (a)* or *(b)*, it is exercisable by the personal representatives of the person entitled to the right.

(2) Where copyright forming part of an estate passes in part to one person and in part to another, so as to apply—

(*a*) to one or more, but not all, of the acts the copyright owner has the right to undertake 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 divided accordingly.

(3) Where, under *subsection (1)*, a right becomes exercisable by more than one person—

(*a*) it may, in the case of the paternity right, be exercised by any of them,

(*b*) it is, in the case of the integrity right or the right to privacy in photographs and films conferred by *section 114*, a right exercisable by each of them, and

(*c*) any waiver of the right under *section 116* made by one of them shall not affect the rights of the other persons.

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

(5) Any infringement of the right conferred by *section 113* in relation to a false attribution of a work after the death of a person is actionable by the personal representatives of that person.

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

CHAPTER 8

Dealings with Rights in Copyright Works

Assignment and licences.

120.—(1) The copyright in a work is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) A transmission of the copyright in a work by assignment, by testamentary disposition or by operation of law may be partial, so as to apply—

(*a*) to one or more but not all of the acts the copyright owner has the right to undertake or authorise, and

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

(3) An assignment of the copyright in a work, whether in whole or in part, is not effective unless it is in writing and 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 or her 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 undertaking any act with or without the licence of the copyright owner shall be construed accordingly.

(5) A licence granted by a prospective owner of copyright is binding on every successor in title to his or her interest (or prospective 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 undertaking any act with or without the licence of the copyright owner shall be construed accordingly.

Prospective ownership of copyright.

121.—(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, whether in whole or in part, to another person, then, where, on the copyright coming into existence, the assignee or his or her successor in title, or another person claiming under him or her, would be entitled as against all other persons to require the copyright to be vested in him or her, the copyright shall vest in the assignee or his or her successor in title under this section or any other person claiming under him or her.

(2) Where, at the time when any copyright comes into existence, the person who, if he or she were then living, would be entitled to the copyright is dead, the copyright shall devolve as if it had subsisted immediately before his or her death and he or she had then been the owner of the copyright.

(3) The rights of an assignee to future copyright shall not be prejudiced by the fact that an agreement referred to in *subsection (1)* was made before the commencement of this section.

(4) In this Part—

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

"prospective owner" includes a person who is prospectively entitled to copyright by virtue of an agreement made in relation to future copyright.

Exclusive licences.

122.—(1) In this Part, an "exclusive licence" means a licence in writing which is signed by or on behalf of an owner or prospective owner of the copyright which authorises 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 and references to an exclusive licensee shall be construed accordingly.

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

Copyright to pass under will with certain original fixations.

123.—Where, under a bequest (whether specific or general), a person is entitled, beneficially or otherwise, to any material thing containing an original fixation of a work which has not been made available to the public before the death of the testator, the bequest shall be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his or her death, unless a contrary intention is indicated in the will of the testator or in a codicil to that will.

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

124.—(1) Without prejudice to the right of an author to receive equitable remuneration in respect of a rental right, where an agreement concerning film production is concluded between an author or a prospective author of a copyright work and a film producer, the author or prospective author shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a copy of the work of the author in the film.

(2) Where a presumption of transfer of the rental right arises by virtue of *subsection (1)*, the absence of a signature by or on behalf of the author shall not restrict the operation of *section 120* or *121*.

(3) The reference in *subsection (1)* to an agreement concluded between an author or a prospective author and a film producer includes any agreement whether made by them directly or through intermediaries.

(4) The right to equitable remuneration on the transfer of the rental right applies where there is a presumed transfer under this section as in the case of an actual transfer.

Right to equitable remuneration where rental right transferred.

125.—(1) Without prejudice to the generality of *section 124*, where an author has transferred his or her rental right he or she retains the right to equitable remuneration for the rental.

(2) The right to equitable remuneration conferred by this section shall not be waived by the author and the author shall not assign the right to equitable remuneration except to a collecting society for the purpose of enabling the collecting society to exercise that right on his or her behalf.

(3) The right to equitable remuneration is transmissible by way of testamentary disposition or by operation of law, as personal or moveable property and it may be further transmitted, including by assignment, by any person who legally acquires the right.

(4) Equitable remuneration under this section is payable by the person to whom the rental right is transferred or any successor in title.

(5) Subject to *section 126*, the amount payable by way of equitable remuneration is that which has been agreed by or on behalf of the persons by and to whom it is payable.

(6) An agreement is void in so far as it purports to exclude or restrict the right to equitable remuneration conferred by this section.

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

(8) In this section, "collecting society" means a society or other organisation which has as one of its main objects the exercise of the right to collect equitable remuneration under this section on behalf of more than one author.

Equitable remuneration: reference of determination of amount to Controller.

126.—(1) In default of agreement as to the amount of equitable remuneration payable under *section 125*, the person by or to whom it is payable may apply to the Controller for an order under *subsection (4)*.

(2) Subject to *subsection (3)*, a person by or to whom equitable remuneration is payable under *section 125* may also apply to the Controller—

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

(*b*) to vary any previous determination of the Controller as to the amount payable.

(3) An application may not be made under *subsection (2)* within 12 months from the date of the previous determination except with the special leave of the Controller.

(4) On an application being made under this section the Controller shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as he or she may determine to be reasonable in the circumstances, having regard to the importance of the contribution of the author.

(5) An order made under *subsection (4)* shall have effect from the date on which it is made or such later date as may be specified by the Controller.

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

(7) An agreement is void in so far as it purports to prevent a person challenging the amount of equitable remuneration or to restrict the powers of the Controller conferred by this section.

CHAPTER 9

Remedies: Copyright Owner

Infringement actionable by copyright owner.

127.—(1) An infringement of the copyright in a work is actionable by the copyright owner.

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

(3) Subject to *section 139*, where in an action for infringement of the copyright in a work the defendant does not admit that the plaintiff is the owner of the copyright the court may direct that evidence in relation to ownership of the copyright be given on affidavit and the court may decide the issue having considered any affidavit presented to it unless it is satisfied that any conflict of evidence between

the affidavits may not be resolved other than by hearing oral testimony in which case the court may order that oral evidence may be adduced.

(4) Hearsay evidence may be accepted for the purposes of any hearing under *subsection (3)*.

Award of damages in infringement action.

128.—(1) The court may, in an action for infringement of copyright award such damages as, having regard to all the circumstances of the case, it considers just.

(2) Without prejudice to any other remedy, where, in an action for infringement of the copyright in a work, 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 the defendant.

(3) In exercising its powers under *subsection (1)* in addition to or as an alternative to compensating the plaintiff for financial loss, the court may award aggravated or exemplary damages or both aggravated and exemplary damages.

Action in respect of construction of building.

129.—In an action for infringement of the copyright in respect of the construction of a building no injunction or other order shall be made—

(*a*) after the construction of the building has begun, so as to prevent it from being completed, or

(*b*) so as to require the building, in so far as it has been constructed, to be demolished.

Undertakings concerning licences of right.

130.—(1) Where, in proceedings for infringement of the copyright in a work in respect of which a licence is available as of right, the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Controller—

(*a*) no injunction shall be granted against the defendant,

(*b*) no order for delivery up shall be made under *section 131*, and

(*c*) the amount recoverable against the defendant by way of damages or on an account of profits shall not exceed three times the amount which would have been payable by the defendant as licensee where a licence on those terms had been granted before the earliest infringement.

(2) An undertaking under *subsection (1)* may be given at any time before the final order in the proceedings without any admission of liability.

(3) Nothing in this section shall affect the remedies available in respect of an infringement committed before a licence was available as of right.

Order for delivery up.

131.—(1) Where a person—

(*a*) in the course of a business, trade or profession, has in his or her possession, custody or control an infringing copy of a work,

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

(*c*) has in his or her possession, custody or control a protection-defeating device,

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

(2) An application under *subsection (1)* shall not be made after the expiration of the period specified in *section 144(1)* as being the limit of the period for delivery up 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 as to the disposal of the infringing copy, article or device.

(3) A person to whom an infringing copy, article or device is delivered up pursuant to an order made under this section shall, where an order under *section 145* as to the disposal of the infringing copy, article or device is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

Application to District Court for seizure of infringing copies, articles or devices.

132.—(1) Without prejudice to *section 133*, where the owner of the copyright in a work applies to the District Court, it may, where satisfied that there are reasonable grounds for believing that there are being hawked, carried about or marketed—

(*a*) infringing copies of the work,

(*b*) articles specifically designed or adapted for making copies of a work, knowing or having reason to believe that it has been or is to be used for making infringing copies of a work, or

(*c*) protection-defeating devices,

authorise by order a member of the Garda Síochána to seize without warrant the copies, articles or devices and to bring them before the District Court.

(2) On being satisfied that any copy, article or device referred to in *subsection (1)* is—

(*a*) an infringing copy,

(*b*) articles specifically designed or adapted for making copies of a work, which the person hawking, carrying about or marketing those articles, knows or has reason to believe that they have been or are to be used to make infringing copies of a work, or

(*c*) a protection-defeating device,

the District Court may order the copy, article or device to be destroyed or to be delivered up to the owner of the copyright or otherwise dealt with as the Court may think fit.

(3) In an application to the District Court under *subsection (1)* or, in any *ex parte* application or interlocutory motion to a court of competent jurisdiction for an order which would permit the applicant to enter and search premises or place specified therein and take possession of material found therein on terms set out in such order, the court hearing such an application may receive hearsay evidence to the effect that the witness or deponent believes that the material may be found in a particular location.

(4) A witness or deponent shall not be obliged to indicate the source of the information upon which that witness formed the belief that material may be found in a particular location.

(5) After the implementation of an order made under this section, the court may, on the application of a person aggrieved by it, award damages against the applicant for the order as it considers just, on being satisfied that—

(*a*) no infringement of copyright has been established, and

(*b*) the information on which the copyright owner applied for the order was given maliciously.

Right of copyright owner to seize infringing copies, articles or devices, etc.

133.—(1) Where it would be impracticable for the owner of the copyright in a work to apply to the District Court for an order under *section 132*, a copy, article or device referred to in *section 132(1)* in respect of which the copyright owner would be entitled to apply for an order for delivery up under *section 131*, may be seized and detained by the copyright owner or a designated representative thereof where the copy, article or device is found being hawked, carried about or marketed.

(2) The right to seize and detain conferred by *subsection (1)* is exercisable, subject to *subsections (4)* to *(8)* of this section, and is subject to any decision of the court relating to disposal of infringing copies, articles or devices under *section 145*.

(3) A person who seizes any infringing copies, articles or devices under this section shall apply to the District Court for an order to dispose of those copies, articles or devices within 30 days of the seizure.

(4) Before any infringing copies, articles or devices are seized under this section notice of the time and place of the proposed seizure shall be given to a member of the Garda Síochána in the District Court Area in which the copies, articles or devices are to be seized.

(5) A person exercising the right to seize and detain conferred by *subsection (1)* may enter premises to which members of the public have access.

(6) A person exercising the right to seize and detain conferred by *subsection (1)* may not seize anything in the possession, custody or control of a person at his or her permanent or regular place of business, trade or profession, and may not use any force.

(7) Without prejudice to the generality of *subsection (6)*, a person exercising the right to seize and detain conferred by *subsection (1)* may make an inventory or prepare other evidence of infringement of copyright or potential infringement of copyright.

(8) At the time when any infringing copies, articles or devices are seized under this section there shall be given to the owner, occupier or person in charge of the place where the copies, articles or devices are seized a notice, in the prescribed form, informing the person of the right of the owner of the copies, articles or devices being seized to apply to the District Court for the return of the copies, articles or devices on the grounds that they are not—

(*a*) infringing copies of a work,

(*b*) articles that have been or are to be used to make infringing copies, or

(*c*) protection-defeating devices.

(9) Without prejudice to the generality of *subsection (8)*, the Minister shall prescribe the form of the notice to be given under that subsection and the form shall specify—

(*a*) the name and the address of the person claiming to be the owner of the copyright in the work concerned,

(*b*) the statutory authority for the seizure,

(*c*) the grounds that the person seizing the copies, articles or devices has for such seizure, and

(*d*) a list of that which is seized.

(10) The owner of any copies, articles or devices seized under this section may apply to the District Court for the return of those copies, articles or devices.

(11) Rules of court shall be made under this section and the rules shall provide for procedures to enable applications to be made and dealt with in an expeditious manner.

(12) Where there has been an exercise of the right to seize and detain, conferred by *subsection (1)*, the court may, on the application of a person aggrieved by it, award damages against a person who exercises that right as it considers just, on being satisfied that—

(*a*) no infringement of copyright has been established, and

(*b*) the person had no reasonable grounds for such seizure.

Rights of owner of copyright in respect of infringing copy.

134.—(1) Subject to the provisions of this Act, the owner of any copyright shall be entitled to all such rights and remedies, in respect of the conversion or detention by any person of—

(*a*) infringing copies of a work,

(*b*) articles that have been or are to be used to make infringing copies, or

(*c*) protection-defeating devices,

as he or she would be entitled to if he or she were the owner of every such copy, article or device and had been the owner thereof since the time when it was made.

(2) Where by virtue of section 12(2) (which relates to successive conversions or detentions) of the Statute of Limitations, 1957, the title of the owner of the copyright to such a copy, article or device referred to in *subsection (1)* of this section would (if he or she had been the owner of the copy, article or device) have been extinguished on the expiration of the period referred to in the said subsection (2), he or she shall not be entitled to any rights or remedies under *subsection (1)* of this section in respect of anything done in relation to that copy, article or device after the expiration of that period.

(3) In awarding damages for conversion, the court shall take into account all the circumstances of the case and shall award such sum as it considers just.

CHAPTER 10

Rights and Remedies: Exclusive Licensee

Rights and remedies of exclusive licensee.

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

(2) The rights and remedies of an exclusive licensee are concurrent with those of the copyright owner and references in *sections 127* to *134* to the copyright owner shall be construed accordingly.

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

Exercise of concurrent rights.

136.—(1) Where an action for infringement of the copyright in a work brought by the copyright owner or an exclusive licensee relates, whether in whole or in part, 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 appropriate 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 under *subsection (1)* shall not be liable for any costs in an action unless he or she takes part in the proceedings.

(3) Nothing in this section shall affect the granting of interlocutory relief on an application by the copyright owner or exclusive licensee.

(4) Where an action for infringement of copyright is brought which relates, whether in whole or in part, to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action, then, the following shall apply—

(*a*) in assessing damages the appropriate court shall have regard to—

(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 where an award of damages has been made, or an account of profits has been directed, in favour of one of them in respect of the infringement;

(*c*) the appropriate court shall, where an account of profits is directed, apportion the profits between them as the court thinks fit, subject to any agreement between the copyright owner and the exclusive licensee.

(5) *Subsection (4)* shall apply whether or not the copyright owner and the exclusive licensee are both parties to the action.

(6) Before—

(*a*) applying for an order for delivery up under *section 131*,

(*b*) applying for an order to seize infringing copies, articles or devices under *section 132*, or

(*c*) exercising the right to seize and detain conferred by *section 133*,

the copyright owner shall notify any exclusive licensee having concurrent rights and the court may, on the application of the licensee, make such order for delivery up, seizure of infringing copies, articles or devices or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right of seizure and detention as it thinks fit, having regard to the terms of the licence between the copyright owner and the exclusive licensee.

CHAPTER 11

Remedies: Moral Rights

Remedies for infringement of moral rights.

137.—(1) An infringement of a right conferred by *section 107, 109, 113* or *114* is actionable as a breach of statutory duty owed to the person entitled to the right concerned.

(2) A person may apply to the appropriate court for damages or other relief in respect of an infringement of a right conferred by *section 107, 109, 113* or *114*.

(3) In proceedings for infringement of the right conferred by *section 109*, the appropriate court may grant an injunction prohibiting any act unless a sufficient disclaimer is made, on such terms and in such a manner as is approved of by the court, dissociating the person entitled to the right from the treatment of the work.

Action in respect of construction of building.

138.—In any proceedings for infringement of a right conferred by *section 107, 109* or *113* in respect of the construction of a building, no injunction or other order shall be made—

(*a*) after the construction of the building has begun, so as to prevent it from being completed, or

(*b*) so as to require the building, in so far as it has been constructed, to be demolished.

CHAPTER 12

Presumptions

Presumptions.

139.—(1) The presumptions specified in this section shall apply in any proceedings, whether civil or criminal, for infringement of the copyright in any work.

(2) Copyright shall be presumed to subsist in a work until the contrary is proved.

(3) Except as otherwise provided in this section, where the subsistence of the copyright in a work is proved or admitted, or is presumed under *subsection (2)*, the

plaintiff shall be presumed to be the owner or, as the case may be, the exclusive licensee of the copyright, until the contrary is proved.

(4) Where

(*a*) a name purporting to be that of the author of a work or of the owner or exclusive licensee of the copyright, as the case may be, appears on copies of the work, or

(*b*) a copy of a work bears or incorporates a statement, label or other mark indicating that a person is the author of the work or the owner or exclusive licensee of the copyright, as the case may be,

that name, statement, label or mark shall be admissible as evidence of the fact stated or indicated which shall be presumed to be correct, unless the contrary is proved.

(5) The person named or in respect of whom a statement, label or other mark appears on or is borne on or is incorporated in copies of a work in accordance with *subsection (4)* shall, unless the contrary is proved, be presumed not to have made the work—

(*a*) in the course of employment referred to in *section 23(1)(a)*,

(*b*) in the course of employment as an officer or employee of a prescribed international organisation referred to in *section 196*,

(*c*) in the course of employment as an officer or employee of the Government or of the State referred to in *section 191*,

(*d*) under the direction or control of either or both of the Houses of the Oireachtas referred to in *section 193*, or

(*e*) in circumstances in which the copyright in the work is conferred on another person by an enactment referred to in *section 23(1)(d)*.

(6) Where a work purports to be a work of joint authorship, *subsections (2), (3), (4)* and *(5)* shall apply in relation to each person purporting to be one of the authors of the work.

(7) Where no name purporting to be that of the author of the work or of the owner or exclusive licensee of the copyright, as the case may be, appears on the work or where the work does not bear or incorporate a statement, label or other mark in accordance with *subsection (4)* and—

(*a*) the work qualifies for copyright protection by reference to the country, territory, state or area, in which it was first lawfully made available to the public, and

(*b*) (i) a name purporting to be that of the person who first lawfully made available to the public the work appears on copies of the work as first so made available, or

(ii) copies of the work bear or incorporate a statement, label or other mark indicating that a named person first lawfully made available to the public the work,

then, that named person shall be presumed to have been the author of the work or the owner or exclusive licensee of the copyright, as the case may be, at the time when the work was first lawfully made available to the public, unless the contrary is proved.

(8) Where the author of the work is dead or the identity of the author cannot be ascertained by reasonable enquiry, it shall be presumed, unless the contrary is proved—

(*a*) that the work is an original work, and

(*b*) that the claims made by the plaintiff as to the date on which the work was first lawfully made available to the public and as to the country, territory, state or area in which the work was first so made available are correct.

(9) The presumptions set out in *subsections (2)* to *(8)* shall apply to the same extent in any actions relating to an infringement which occurred before the date on which copies of a work were first lawfully made available to the public.

CHAPTER 13

Offences: Copyright

Offences.

140.—(1) A person who, without the consent of the copyright Offences. owner—

(*a*) makes for sale, rental or loan,

(*b*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*c*) imports into the State, otherwise than for his or her private and domestic use,

(*d*) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or

(*e*) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the owner of the copyright,

a copy of a work which is, and which he or she knows or has reason to believe is, an infringing copy of the work, shall be guilty of an offence.

(2) In this section "loan" means a loan for reward and in particular does not include a loan to a family member or friend for private and domestic use, and "lends" shall be construed accordingly.

(3) A person who—

(*a*) makes,

(*b*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*c*) imports into the State, or

(*d*) has in his or her possession, custody or control,

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

(4) A person who—

(*a*) (i) makes,

(ii) sells, rents or lends, or offers or exposes for sale, rental or loan,

(iii) imports into the State, or

(iv) has in his or her possession, custody or control,

a protection-defeating device, knowing or having reason to believe that it has been or is to be used to circumvent rights protection measures, or

(*b*) provides information, or offers or performs any service, intended to enable or assist a person to circumvent rights protection measures,

shall be guilty of an offence.

(5) Where copyright is infringed by—

(*a*) the public performance of a literary, dramatic or musical work,

(*b*) the playing or showing in public of a sound recording, artistic work, original database or film, or

(*c*) broadcasting a work or including a work in a cable programme service,

the person who caused the work to be so performed, played, broadcast, included in a cable programme service or shown shall be guilty of an offence where he or she knew or had reason to believe that the copyright in the work would be infringed.

(6) An offence shall not be committed under *subsection (1)* or *(5)* by the undertaking of an act which under this Part may be undertaken without infringing the copyright in a work.

(7) A person guilty of an offence under *subsection (1), (3)* or *(4)* shall be liable—

(*a*) on summary conviction, to a F89**[**class C fine**]** in respect of each infringing copy, article or device, or to imprisonment for a term not exceeding 12 months, or both, or

(*b*) on conviction on indictment, to a fine not exceeding F89**[**€130,000**]**, or to imprisonment for a term not exceeding 5 years, or both.

(8) A person guilty of an offence under *subsection (5)* shall be liable—

(*a*) on summary conviction, to a F89**[**class C fine**]** in respect of such offence or to imprisonment for a term not exceeding 12 months, or both, or

(*b*) on conviction on indictment, to a fine not exceeding F89**[**€130,000**]**, or to imprisonment for a term not exceeding 5 years, or both.

False claims of copyright

141.—A person who, for financial gain, makes a claim to enjoy a right under this Part which is, and which he or she knows or has reason to believe is, false, shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding F90**[**€130,000**]**, or to imprisonment for a term not exceeding 5 years, or both.

Order for delivery up in criminal proceedings.

142.—(1) The court may, on conviction of a person or being satisfied that there is a *prima facie* case to answer, where the court is satisfied that at the time of the arrest or charge the person had in his or her possession, custody or control—

(*a*) in the course of a business, trade or profession, a copy of a work, knowing or having reason to believe it to be an infringing copy,

(*b*) an article specifically designed or adapted for making copies of a work, knowing or having reason to believe that it had been or was to be used to make infringing copies, or

(*c*) a protection-defeating device,

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

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

(*a*) after the expiration of the period specified in *section 144(3)* as being the limit of the period for delivery up, or

(*b*) where it appears to the court unlikely that any order will be made as to the disposal of the infringing copies, articles or devices.

(3) A person to whom an infringing copy, article or device is delivered up pursuant to an order made under this section shall retain it pending the making of a final order or decision not to make an order, as the case may be.

Search warrants and seizure.

143.—(1) Where a judge of the District Court is satisfied by information on oath that there are reasonable grounds for suspecting—

(*a*) that an offence under *section 140* has been, or is about to be, committed in, on or at any premises or place, and

(*b*) that evidence that such an offence has been, or is about to be, committed is in on or at those premises or that place,

the court may issue a warrant authorising a member of the Garda Síochána, accompanied by such other members of the Garda Síochána or other person or persons as that member thinks proper, at any time or times within 28 days from the date of the issue of the warrant on production, where requested, of that warrant, to enter and search the premises or place specified in the warrant using reasonable force where necessary, and to do all or any of the following acts:

(i) to seize any copies of any works, articles or devices in respect of which he or she has reasonable grounds for suspecting that an offence under *section 140* has been or is about to be committed;

(ii) to make an inventory or prepare other evidence of infringement of copyright or potential infringement of copyright;

(iii) to seize anything found there which he or she believes on reasonable grounds may be required to be used in evidence in any proceedings brought in respect of an offence under this Act;

(iv) to require any person found there to give his or her name and address.

(2) A warrant issued under this section may authorise persons, including the copyright owner or designated representative thereof, to accompany and assist any member of the Garda Síochána in executing the warrant or in collating any inventory or other evidence.

(3) A person who—

(*a*) obstructs or interferes with a person acting under the authority of a warrant issued under this section,

(*b*) is found in, on or at the premises or place specified in the warrant by a member of the Garda Síochána acting as aforesaid and who fails or refuses to give the member his or her name and address when required to do so or gives a name or address that is false or misleading,

(*c*) obstructs the exercise of an authority conferred by a warrant under this section, or

(*d*) fails or refuses to give information to a member of the Garda Síochána when requested to do so under this section,

shall be guilty of an offence and shall be liable on summary conviction to a F91**[**class C fine**]**, or to imprisonment for a term not exceeding 12 months, or both.

CHAPTER 14

Delivery up and Disposal

Period after which remedy for delivery up is not available.

144.—(1) Subject to *subsection (2)*, an application for an order under *section 131* may not be made after the expiration of 6 years from the date on which the infringing copy, article or device was made.

(2) Where, during the whole or any part of the period referred to in *subsection (1)*, the copyright owner—

(*a*) is under a disability, or

(*b*) is prevented by fraud or concealment from discovering the facts entitling him or her to apply for an order,

an application under *section 131* may be made at any time before the expiration of 6 years from the date on which the applicant ceased to be under a disability, or, as the case may be, could, with reasonable diligence, have discovered those facts.

(3) An order for delivery up in criminal proceedings under *section 142* shall not, in any case, be made after the expiration of 6 years from the date on which the proceedings under that section were initiated.

(4) Where, in any proceedings for an order for delivery up under *section 131* or *142*, the date of the making of the infringing copy, article or device is put into question by the defendant, the onus of proof shall be on the defendant that the infringing copy, article or device was made more than 6 years before the date on which an application for an order under *section 131* was made or proceedings under *section 142* were initiated.

Order as to disposal of infringing copy, article or device.

145.—(1) An application may be made to the appropriate court for an order that an infringing copy, article or device—

(*a*) delivered up under *section 131* or *142*, or

(*b*) seized and detained under *section 132* or *143*,

shall be—

(i) forfeited to the copyright owner, or

(ii) destroyed or otherwise dealt with as the court may direct,

and the court may make such an order or such other order as it thinks fit.

(2) In considering what order, if any, should be made under *subsection (1)*, the court shall consider whether other remedies available in an action for infringement of the copyright in a work would be adequate to compensate the copyright owner and to protect his or her interests.

(3) Provision shall be made by rules of the court as to the service of notice on persons having an interest in the copies, articles or devices concerned, and any such person may—

(*a*) appear in proceedings for an order under this section whether or not he or she was served with notice, or

(*b*) appeal against any order made, whether or not he or she appeared in the proceedings concerned.

(4) An order made under this section shall not take effect until the expiration of the period within which notice of an appeal may be given or, where before the expiration of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(5) Where there is more than one person interested in a copy, article or device, the court shall make such order as it thinks fit and may direct the copy, article or device to be sold or otherwise dealt with and any proceeds divided in accordance with the direction of the court.

(6) Where the court decides that no order shall be made under this section, the person who had the copy, article or device in his or her possession, custody or control immediately before it was delivered up or seized shall be entitled to its return.

(7) References in this section to a person having an interest in a copy, article or device include any person in whose favour an order may be made under this section in respect of the copy, article or device or under *section 264* or under section 23 of the Trade Marks Act, 1996.

Amendment to section 23 of Trade Marks Act, 1996.

146.—Section 23 of the Trade Marks Act, 1996, is hereby amended by the substitution of the following subsection for subsection (6) of that section:

"(6) References in this section to a person having an interest in goods, material or articles include references to any person in whose favour an order could have been made under *sections 145* and *264* of the *Copyright and Related Rights Act, 2000*.".

CHAPTER 15

Provision for Preventing Importation

Infringing copies, articles or devices may be treated as prohibited goods.

147.—(1) The owner of the copyright in a work may give notice in writing to the Revenue Commissioners—

(*a*) that he or she is the owner of the copyright in the work, and

(*b*) that he or she requests the Revenue Commissioners for a period specified in the notice to treat as prohibited goods—

(i) copies of the work which are infringing copies,

(ii) articles specifically designed or adapted or used for making infringing copies of the work, or

(iii) protection-defeating devices.

(2) The period specified in a notice given under *subsection (1)* shall not exceed 5 years and in any case shall not extend beyond the period for which copyright is to subsist.

(3) The owner of the copyright in a work may give notice in writing to the Revenue Commissioners—

(*a*) that he or she is the owner of the copyright in the work,

(*b*) that infringing copies, articles or devices referred to in *subsection (1)(b)* are expected to arrive in the State at a time and a place specified in the notice, and

(*c*) that he or she requests the Revenue Commissioners to treat those copies, articles or devices as prohibited goods.

(4) When a notice given under *subsection (1)* is in force the importation of goods to which the notice relates, other than copies of a work imported by a person for his or her private and domestic use, is prohibited.

(5) Notwithstanding *subsection (4)* or anything contained in the Customs Acts, a person is not, by reason of the prohibition, liable to any penalty under the Customs Acts other than forfeiture of the prohibited goods.

(6) In this section "prohibited goods" means counterfeit or pirated goods within the meaning of the European Communities (Counterfeit and Pirated Goods) Regulations, 1996 (S.I. No. 48 of 1996).

Power of Revenue Commissioners to make regulations.

148.—(1) The Revenue Commissioners may prescribe the form in which notice is to be given under *section 147* and require a person giving notice—

(*a*) to furnish the Revenue Commissioners with such evidence as may be prescribed, either on giving notice or when the goods are imported, or at both these times, and

(*b*) to comply with such other conditions as may be prescribed.

(2) Regulations made under this section may require a person giving a notice under *section 147*—

(*a*) to pay such fees in respect of the notice as may be specified by the Revenue Commissioners from time to time,

(*b*) to give such security as may be specified by the Revenue Commissioners in respect of any liability or expense which the Revenue Commissioners may incur in consequence of the notice given by reason of the detention of any infringing copy, article or device or anything done to any infringing copy, article or device detained, and

(*c*) to indemnify the Revenue Commissioners against any such liability or expense whether security has been given or not.

(3) Regulations made under this section may make different provisions in respect of different classes of case to which they apply and may include such incidental and supplementary provisions as the Revenue Commissioners consider expedient from time to time.

(4) Any fees paid pursuant to regulations made under this section shall be accounted for in such manner as shall be prescribed by the Minister for Finance.

CHAPTER 16

Copyright Licensing

Licensing schemes and licensing bodies.

149.—(1) In this Part—

"licences" means licences to undertake or authorise the undertaking of any of the acts restricted by copyright;

"licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, either as owner or prospective owner of copyright, or as exclusive licensee, or as agent for him or her, of copyright licences, and whose objects include the granting of licences relating to works of more than one copyright owner;

"licensing scheme" means a scheme specifying—

(*a*) the classes of case in which the operator of the scheme, or the person on whose behalf that operator 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) References in this Part to licences or licensing schemes relating to works of more than one copyright owner shall not include licences or schemes relating to—

(*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, including holding companies and their subsidiaries.

References and Applications Relating to Licensing Schemes

General references.

150.—*Sections 151* to *156* apply to licensing schemes which are operated by licensing bodies in relation to the copyright in works of more than one copyright owner, in so far as they relate to licences for any of the acts restricted by copyright under *section 37*.

Reference of proposed licensing scheme to Controller.

151.—(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Controller by an organisation which claims to be representative of persons who claim that they require licences in cases of a description to which the scheme would apply.

(2) The Controller shall not consider a reference by an organisation under *subsection (1)* unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) The Controller may refuse to consider a reference under *subsection (1)* on the ground that the reference is premature.

(4) Where the Controller decides to consider a reference under *subsection (1)*, he or she shall consider the subject matter of the reference and make an order, either confirming or varying the proposed scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Reference of licensing scheme to Controller.

152.—(1) Where a licensing scheme is in operation and a dispute arises with respect to the scheme between the operator of the scheme and—

(*a*) a person claiming that he or she 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 operator, person or organisation may refer the scheme to the Controller in so far as it relates to cases of that description.

(2) The Controller shall not consider a reference by an organisation under *subsection (1)* unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) A scheme which has been referred to the Controller under *subsection (1)* shall remain in operation until proceedings in relation to the reference are concluded.

(4) The Controller shall consider the matter referred to him or her and shall make an order, confirming or varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Further reference of scheme to Controller.

153.—(1) Where the Controller has, in respect of a licensing scheme under *section 151* or *152* or under this section, made an order in respect of a scheme, and the order remains in force, the persons to whom this section applies may refer the scheme to the Controller in so far as it relates to cases of that description.

(2) This section applies to—

(*a*) the operator of the scheme,

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

(*c*) an organisation claiming to be representative of the persons referred to in *paragraph (b)*.

(3) Where an order under *section 151* or *152* or this section is in force, the licensing scheme in respect of which the order is made shall not, except with the special leave of the Controller, be referred to the Controller in respect of the same description of cases—

(*a*) within 12 months from the date of the order in respect of the previous reference, or

(*b*) where the order was made so as to be in force for 15 months or less, until the last 3 months before the expiration of the order.

(4) A scheme which has been referred to the Controller under *subsection (1)* shall remain in operation until proceedings in relation to the reference are concluded.

(5) The Controller shall consider the matter referred to him or her and shall make an order, confirming, varying or further varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(6) An order under *subsection (5)* may be made for such period as the Controller may determine.

Application for grant of licence in connection with licensing scheme.

154.—(1) A person who claims, in a case to which a licensing scheme relates, that the operator of the scheme has refused to grant or to procure the grant to him or her of a licence in accordance with the scheme, or has failed to do so within a reasonable period, may apply to the Controller for an order under *subsection (4)*.

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

(*a*) has refused to grant or to procure the grant to him or her of a licence, or has failed to do so within a reasonable period and that in the circumstances it is unreasonable that a licence should not be granted, or

(*b*) proposes terms for a licence that are unreasonable,

may apply to the Controller for an order under *subsection (4)*.

(3) A case shall be regarded as being excluded from a licensing scheme for the purposes of *subsection (2)* where—

(*a*) the scheme provides for the grant of licences, subject to terms excepting matters from the licence and the case is 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) Where the Controller is satisfied that a claim under this section is well-founded, he or she 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 Controller may determine to be applicable in accordance with the scheme, or as the case may be, to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Review of orders made by Controller.

155.—(1) Where the Controller has made an order under *section 154* 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 Controller for a review of that order.

(2) An application under *subsection (1)* shall not be made except with the special leave of the Controller—

(*a*) within 12 months from the date of the order or of the decision on a previous application under this section, or

(*b*) where—

(i) the order was made so as to be in force for 15 months or less, or

(ii) as a result of the decision on a previous application under this section the order is due to expire within 15 months of that decision,

until the last 3 months before the expiration date.

(3) The Controller shall, on an application for review, confirm or vary his or her order as the Controller may determine to be reasonable, having regard to the terms

applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

Effect of order of Controller as to licensing scheme.

156.—(1) A licensing scheme which has been confirmed or varied by the Controller under *section 151, 152* or *153* shall be in operation or, as the case may be, remain in operation, in so far as it relates to the description of case in respect of which the order was made, for such period as the order remains in force.

(2) Where an order made by the Controller under *section 151, 152* or *153* confirming or varying a licensing scheme is in force (in this section referred to as "an order to which this section applies"), 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 applying to the case concerned or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and

(*b*) complies with the other terms applicable to the licence under the scheme,

is in the same position as regards infringement of copyright as if he or she had at all material times been the holder of a licence granted by the owner of the copyright concerned in accordance with the scheme.

(3) Subject to *subsection (4)*, the Controller may direct that an order to which this section applies, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference was made, or where later, the date on which the scheme came into operation.

(4) Where a direction is made under *subsection (3)*—

(*a*) any necessary repayments or further payments shall be made in respect of charges already paid, and

(*b*) the reference in *subsection (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.

(5) A direction shall not be made under this section where *subsection (6)* applies.

(6) An order of the Controller made under *section 152* or *153* in relation to a scheme which is certified for any purpose under *section 173* has effect, in 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 Controller.

(7) Where the Controller has made an order under *section 154* and the order remains in force, the person in whose favour the order is made, where he or she—

(*a*) pays to the operator of the scheme any charges payable in accordance with the order or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and

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

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

References and Applications Relating to Licensing by Licensing Bodies

General references by licensing bodies.

157.—*Sections 158* to *161* apply to licences in relation to the copyright in works of more than one copyright owner, granted by a licensing body otherwise than pursuant to a licensing scheme, in so far as the licences relate to any of the acts restricted by copyright under *section 37*.

Reference to Controller of proposed licence.

158.—(1) The terms on which a licensing body proposes to grant a licence may be referred to the Controller by the prospective licensee for an order under *subsection (3)*.

(2) The Controller may refuse to consider a reference under *subsection (1)* on the ground that the reference is premature.

(3) Where the Controller decides to consider a reference under *subsection (1)*, he or she shall consider the terms of the proposed licence and make an order, confirming or varying the terms, as the Controller may determine to be reasonable in the circumstances.

(4) An order under *subsection (3)* may be made for such period as the Controller may determine.

Reference to Controller of expiring licence.

159.—(1) A licensee under a licence which is due to expire with the passage of time or as a result of notice given by the licensing body may apply to the Controller on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) An application under *subsection (1)* may be made at any time during the last 3 months before the expiration of the licence.

(3) A licence in respect of which a reference has been made to the Controller under *subsection (1)* shall remain in force until proceedings in relation to the reference are concluded.

(4) Where the Controller is satisfied that an application made under *subsection (1)* is well-founded, he or she shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Controller may determine to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Application for review of order made by Controller.

160.—(1) Where the Controller has made an order under *section 158* or *159*, the licensing body or the person entitled to the benefit of the order may apply to the Controller for a review of that order.

(2) An application under *subsection (1)* shall not be made except with the special leave of the Controller—

(*a*) within 12 months from the date of the order or of the decision on a previous application under this section, or

(*b*) where—

(i) the order was made so as to be in force for 15 months or less, or

(ii) as a result of the decision on a previous application under this section, the order is due to expire within 15 months of that decision,

until the last 3 months before the expiration date.

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

Effect of order of Controller as to licence.

161.—(1) Where the Controller has made an order under *section 158* or *159*, and the order remains in force, the person entitled to the benefit of the order, where he or she—

(*a*) pays to the licensing body any charges payable in accordance with the order or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and

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

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

(2) The benefit of an order made under *section 158* or *159* may be assigned—

(*a*) in the case of an order made under *section 158*, where assignment is not prohibited under the terms of the order of the Controller, and

(*b*) in the case of an order made under *section 159*, where assignment was not prohibited under the terms of the original licence.

(3) The Controller may direct that an order made under *section 158* or *159* or an order made under *section 160* varying such an order, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference or application was made or, where later, the date on which the licence was granted or, as the case may be, was due to expire.

(4) Where a direction is given under *subsection (3)*—

(*a*) any necessary repayments or further payments shall be made in respect of charges already paid, and

(*b*) the reference in *subsection (1)(a)* to the charges payable in accordance with the order shall be construed, where the order is varied by a further order, as a reference to the charges so payable by virtue of that further order.

Licensing: Miscellaneous

General considerations: unreasonable discrimination.

162.—(1) In determining what is reasonable, on a reference or application under this Chapter relating to a licensing scheme or licence, the Controller 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 his or her powers so as to ensure 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.

(2) *Subsection (1)* shall not affect the obligation of the Controller in any case to have regard to all relevant circumstances.

Licences for reprographic copying.

163.— Where a reference or application is made to the Controller under this Chapter relating to the licensing of reprographic copying of literary, dramatic, musical or artistic works, original databases, or of the typographical arrangement of published editions, which have been lawfully made available to the public, the Controller shall have regard to—

(*a*) the extent to which copies of the works concerned are otherwise available,

(*b*) the proportion of the work to be copied, and

(*c*) the nature of the use to which the copies are likely to be put.

Licences to reflect payments in respect of underlying rights.

164.—Where a reference or an application is made under this Chapter in relation to licensing of the copyright in a work, the Controller shall take into account, in considering what charges are to be paid for a licence, any payments which the owner of the copyright is liable to make pursuant to the granting of the licence, or pursuant to the acts authorised by the licence—

(*a*) to owners of the copyright in works included in the work, or

(*b*) in respect of any performance, included in the work.

Licences to reflect conditions imposed by promoters of events.

165.—(1) Where a reference or an application is made under this Chapter relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes which include, or are to include, any entertainment or other event, the Controller shall have regard to any conditions imposed by the promoters of the entertainment or other event, and in particular the Controller shall not consider a refusal or failure to grant a licence to be unreasonable where it could not have been granted in a manner which is consistent with those conditions.

(2) Nothing in this section shall require the Controller to have regard to any conditions where those conditions—

(*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 sound recording, film, broadcast or cable programme.

Licences in respect of works included in retransmissions.

166.—(1) This section applies to references or applications under this Chapter relating to licences to include a work in a broadcast or cable programme service, where one broadcast or cable programme (in this section referred to as the "first transmission") is, by reception and immediate retransmission without alteration, to be further broadcast or included in a cable programme service (in this section referred to as the "further transmission").

(2) In so far as the further transmission is to the same area as the first transmission, the Controller shall, in considering what charges, if any, are to 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 that owner in respect of transmissions to that area.

(3) In so far as the further transmission is to an area outside that to which the first transmission was made, the Controller shall disregard all further transmission in considering what charges, if any, are to be paid for licences for the first transmission.

Implied indemnity in certain schemes and licences for reprographic copying.

167.—(1) This section applies to—

(*a*) schemes for licensing reprographic copying of literary, dramatic, musical or artistic works, original databases, or of the typographical arrangement of published editions, lawfully made available to the public, and

(*b*) licences granted by licensing bodies for such copying,

where the scheme or licence concerned does not specify the works to which it applies with sufficient particularity so as to enable licensees to determine whether a work is within the scheme or licence by inspection of the scheme or licence and the work.

(2) There is implied in every scheme or licence to which this section applies—

(*a*) an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme, and

(*b*) an undertaking by the licensing body to indemnify a licensee,

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

Power to extend application of scheme or licence.

168.—(1) This section applies to—

(*a*) a licensing scheme to which *sections 151* to *156* apply, in so far as they provide for the grant of licences, or

(*b*) a licence to which *sections 158* to *161* apply,

in so far as the scheme provides for the grant of licences, or the licence is a licence which authorises the making by or on behalf of educational establishments for the purposes of F92**[**education**]** of reprographic copies of literary, dramatic, musical or artistic works, original databases or of the typographical arrangement of published editions; which have been lawfully made available to the public.

(2) Where it appears to the Minister 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 those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or prejudice the interests of the owner of the copyright,

the Minister may by order provide that the scheme or licence shall extend to those works.

(3) Where the Minister proposes to make an order under *subsection (2)*, he or she shall give notice of the proposal to—

(*a*) the owner of the copyright,

(*b*) the licensing body concerned, and

(*c*) such persons or organisations representative of educational establishments, and such other persons or organisations, as the Minister thinks fit.

(4) Where the identity of a person, body or organisation required to be given notice under *subsection (3)* cannot be ascertained by reasonable enquiry, an advertisement published by the Minister in *Iris Oifigiúil* and at least two newspapers circulating in the State specifying details of the proposal to extend the scheme or licence shall be deemed to be notice for the purposes of that subsection.

(5) A notice given under *subsection (3)* shall inform the persons referred to in that subsection of their right to make oral or written representations to the Minister concerning the proposal within 6 months from the date of the notice, and where any of those persons wishes to make oral representations, the Minister shall appoint a person to hear the representations and to report to the Minister.

(6) In considering whether to make an order under *subsection (2)*, the Minister shall take into account any representations made to him or her under *subsection (5)* and such other matters as appear to the Minister to be relevant.

Variation or discharge of order extending scheme or licence.

169.—(1) The owner of the copyright in a work in respect of which an order is in force under *section 168* may apply to the Minister for the variation or discharge of the order, stating his or her reasons for making the application.

(2) The Minister shall not consider an application made within 2 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 the Minister that the circumstances are exceptional.

(3) The Minister may confirm the order concerned and where the Minister refuses to confirm the order, he or she shall give notice of the application to—

(*a*) the licensing body concerned, and

(*b*) such persons or organisations representative of educational establishments, and such other persons or organisations, as the Minister thinks fit.

(4) A notice given under *subsection (3)* shall inform the persons referred to in that subsection of their right to make written or oral representations to the Minister concerning the application under *subsection (1)* within 2 months from the date of the notice, and where any of those persons wishes to make oral representations, the Minister shall appoint a person to hear the representations and to report to the Minister.

(5) In considering an application under *subsection (1)*, the Minister shall take into account the reasons for the application, any representations made to him or her under *subsection (4)* and such other matters as appear to the Minister to be relevant.

(6) The Minister may make such order as he or she thinks fit confirming or discharging the order or, as the case may be, the order as previously varied, or varying or further varying the order so as to exclude works from it.

Appeals against orders.

170.—(1) The owner of the copyright in a work which is the subject of an order made under *section 168* may appeal to the High Court 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 matters referred to in *section 168(2)*.

(2) Where the Minister has made an order under *section 169*—

(*a*) the person who applied for the order, or

(*b*) any person or organisation representative of educational establishments, or any other persons or organisations as the Minister thinks fit, who were given notice of the application for the order and who made representations under *subsection (4)* of that section,

may appeal to the High Court, which may confirm, vary or discharge the order.

(3) An appeal under this section shall be brought within 6 weeks of the making of the order, or such further period as the High Court may allow.

(4) An order made under *section 168* or *169* shall not come into force until the expiration of 6 weeks from the making of the order or, where an appeal is brought before the expiration of that period, until the appeal proceedings are disposed of or withdrawn.

(5) Where an appeal is brought on or before the expiration of the period specified in *subsection (4)*, any decision of the High Court on the appeal shall not affect the validity of anything done in reliance on the order before that decision takes effect.

Inquiry whether other provisions required.

171.—(1) The Minister may appoint a person to inquire whether other provisions are 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 F93**[**education**]** of reprographic copies of literary, dramatic, musical or artistic works, original databases, or of the typographical arrangement of published editions, which—

(*a*) have been lawfully made available to the public, and

(*b*) are of a description which appears to the Minister—

(i) not to be regulated by an existing licensing scheme or general licence, and

(ii) not to be within the power conferred by *section 168*.

(2) The Minister may prescribe procedures for the establishment and conduct of an inquiry under this section and without prejudice to the generality of the aforesaid may prescribe that—

(*a*) notice be given to persons or organisations appearing to the Minister to represent the owners of the copyright in works of that description,

(*b*) notice be given to persons or organisations appearing to the Minister to represent educational establishments, or

(*c*) written or oral representations may be made by those persons.

(3) Where procedures are prescribed under *subsection (2)*, they shall not affect the rights of any other person to be given notice of such inquiries or the making of representations by other persons or organisations.

(4) The person appointed to hold an inquiry under this section shall not recommend the making of other provisions unless he or she is satisfied that—

(*a*) it would be of advantage to educational establishments to be authorised to make reprographic copies of the works concerned, and

(*b*) making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or prejudice the interests of the owner of the copyright.

(5) Where a person appointed to hold an inquiry under this section recommends the making of other provisions, he or she shall specify any terms, other than terms as to the charges payable, on which licences under those provisions shall be available.

Statutory licence where recommendation not implemented.

172.—(1) The Minister may, within one year of the making of a recommendation under *section 171*, by order provide, that where the provision to which *subsection (2)* applies has not been made pursuant to the recommendation, the making by or on behalf of an educational establishment, for the purposes of F94**[**education**]**, of reprographic copies of the works to which the recommendation relates, shall be deemed to be licensed by the owners of the copyright in the works.

(2) For the purposes of *subsection (1)*, provision shall be regarded as having been made pursuant to the recommendation where—

(*a*) a certified licensing scheme has been established under which a licence is available to the establishment concerned, or

(*b*) a general licence has been—

(i) granted to or for the benefit of that establishment,

(ii) referred by or on behalf of that establishment to the Controller under *section 158*, 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) An existing licence authorising the making of the copies referred to in *subsection (1)* (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 restrictive or more onerous than the licence provided for by an order made under *subsection (1)*.

(4) An order made under *subsection (1)* shall provide that the licence be free of any charge and, in relation to other matters, shall be subject to any terms specified in the recommendation and to such other terms as the Minister may think fit.

(5) Where a copy which would otherwise be an infringing copy is made pursuant to a licence provided for by an order made under *subsection (1)* and is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

(6) An order made under *subsection (1)* shall come into operation not less than 6 months after it is made and, subject to *subsection (7)*, the order may be varied from time to time.

(7) An order made under *subsection (1)* shall not be varied so as to include works other than those to which the recommendation relates or to remove any terms specified in the recommendation.

(8) In this section, "certified licensing scheme" means a licensing scheme certified under *section 173* for the purposes of this section.

Certification of licensing schemes.

173.—(1) A person operating or proposing to operate a licensing scheme may apply to the Minister to certify the scheme for the purposes of *section 56* F95**[**, *57C***]** or *172*.

(2) The Minister may by order certify a licensing scheme where he or she is satisfied that—

(*a*) the licensing body in charge of the scheme is representative of a substantial number of rightsholders in the category of works to which the scheme is designed to apply, and

(*b*) the scheme sets out clearly the charges payable and the other terms and conditions on which licences are to be granted.

(3) The scheme shall be set out in an order made under *subsection (2)* and the certification shall come into operation for the purposes of *section 56* F95**[**, *57C***]** or *172* as the case may be—

(*a*) on a date, specified in the order, not less than 8 weeks after the order is made, or

(*b*) where the scheme is the subject of a reference under *section 151*, on any later date on which the order of the Controller under that section comes into force, or the reference is withdrawn.

(4) A variation of the scheme to which this section applies is not effective unless a corresponding amendment of the order is made and the Minister shall make such an amendment in the case of a variation ordered by the Controller on a reference under *section 151*, *152* or *153* and may do so in any other case where the Minister thinks fit.

(5) An order made under *subsection (2)* shall be revoked where the scheme ceases to operate and may be revoked where it appears to the Minister that the scheme is no longer being operated in accordance with the terms of the order.

Cable Retransmissions

Collective exercise of certain rights in relation to cable retransmissions.

174.—F96**[**(1) The owner of the copyright or the owner of a related right in a literary, dramatic, musical or artistic work, an original database, a sound recording or a film contained in a television or radio programme shall have the right to grant or refuse authorisation for cable retransmission (in this section referred to as the "cable retransmission right").**]**

F97**[**(1A) The owner of the copyright or the owner of a related right in a work contained in a television or radio programme shall have the right to grant or refuse the authorisation for non-cable retransmission (in this section referred to as the "non-cable retransmission right").**]**

(2) F98**[**...**]**

(3) The cable retransmission right may be exercised against a cable programme service provider only through a licensing body.

F97**[**(3A) The non-cable retransmission right may be exercised against the operator of the retransmission service only through a licensing body.**]**

F96**[**(4) Where the owner of the copyright or the owner of a related right in a work has not transferred his or her cable retransmission right or non-cable retransmission right to a licensing body, the licensing body which manages rights of the same category shall be deemed to be permitted to manage his or her right.**]**

(5) Where more than one licensing body manages cable retransmission rights, F96**[**the owner of the copyright or the owner of a related right**]** in a work may choose which of them is deemed to be permitted to manage his or her right.

F97**[**(5A) Where the owner of the copyright or the owner of a related right in a work has not transferred his or her non-cable retransmission right to a licensing body and more than one licensing body manages non-cable retransmission rights of that category, the operator of a retransmission service shall make an application to the Controller and the Controller shall determine which licensing body shall have the right to grant or refuse the non-cable retransmission right.

(5B) An application under *subsection (5A)* shall be in writing and in such form as may be determined by the Controller from time to time.

(5C) Where the identity of the owner of the non-cable retransmission right is known, the Controller shall, at least 28 days prior to making a determination under *subsection (5E)*, give notice in writing to him or her of an application under *subsection (5A)* and the Controller shall invite him or her to make observations in writing, in relation to that application, not later than 14 days after the date of the notice.

(5D) For the purposes of making a determination under *subsection (5E)*, the Controller may by notice in writing to the applicant or to the owner of the non-cable retransmission right, require him or her to provide to the Controller, not later than 28 days after the date of the notice, such information relating to the proposed non-cable retransmission or to the non-cable retransmission right as the Controller may reasonably require.

(5E) The Controller shall, having considered any observations received under *subsection (5C)* and any information provided under *subsection (5D)*, determine which licensing body has the right to grant or refuse the non-cable retransmission right in the State.**]**

F96**[**(6) The owner of the copyright or the owner of a related right in a work to whom *subsection (4)*, *(5)* or *(5A)* applies has the same rights and obligations resulting from any relevant agreement between the cable programme service provider or the operator of a retransmission service, as the case may be, and the licensing body, as an owner who has transferred their cable retransmission right or their non-cable retransmission right, as the case may be, to that licensing body.

(7) Any rights to which the owner of the copyright or the owner of a related right in a work may be entitled under *subsection (6)* shall be exercised within the period of 3 years commencing on the date of the cable retransmission or the non-cable retransmission concerned.

(8) This section shall not apply to any cable retransmission right or non-cable retransmission right exercisable by a broadcasting organisation in respect of its own transmission, including where the rights concerned are owned by the broadcasting organisation or have otherwise been transferred to it by other rightholders.

(8A) A broadcasting organisation and an operator of a retransmission service shall conduct negotiations for the authorisation of a non-cable retransmission in good faith.

(8B) Where no agreement is concluded between a broadcasting organisation and an operator of a retransmission service or between a licensing body and an operator of a retransmission service regarding the cable retransmission right or the non-cable retransmission right, as the case may be, the parties may engage in mediation within the meaning of the Mediation Act 2017 and that Act shall apply to any such mediation subject to the modification referred to in *subsection (8C)* and any other necessary modifications.

(8C) The modification mentioned in *subsection (8B)* is the substitution of the following subsection for subsection (4) of section 8 of the Mediation Act 2017:

> "(4) The mediator may make proposals to the parties to resolve the dispute and any such proposals shall be deemed to have been accepted if the parties do not object to the proposals within 3 months after the date of the proposals."

(9) (*a*) In this section—

"cable retransmission" means the simultaneous, unaltered and unabridged retransmission by way of a cable programme service of an initial transmission from another Member State, by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public, regardless of how the operator of a cable retransmission service obtains the programme-carrying signals from the broadcasting organisation for the purpose of retransmission;

"non-cable retransmission" means any simultaneous, unaltered and unabridged retransmission, other than cable retransmission, intended for reception by the public, of an initial transmission from another Member State, by wire or over the air, including that by satellite, but not by online transmission, of television or radio programmes intended for reception by the public provided—

(i) the retransmission is carried out by a party other than the broadcasting organisation which made the initial transmission or under whose control and responsibility that initial transmission was made, regardless of how the party carrying out the retransmission obtains the programme-carrying signals from the broadcasting organisation for the purpose of retransmission, and

(ii) where the retransmission is over an internet access service (within the meaning of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015[3]), it is carried out in an environment in which the operator of the retransmission service provides a secure retransmission to authorised users.

(*b*) In this section, a reference to a licensing body shall be construed as including a reference to a collective management organisation.**]**

CHAPTER 17

Registration of Copyright Licensing Bodies

Register of copyright licensing bodies.

175.—(1) The Controller shall establish and maintain a register of copyright licensing bodies in such form and manner and containing such particulars as the Minister may prescribe to be known as the "Register of Copyright Licensing Bodies" and referred to in this Part as the "Register".

(2) The Controller shall keep the Register in such form so that the Register is capable of being used to make a copy of any entry in the Register.

(3) The Register shall be kept at such place as may be prescribed by the Minister and, subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance—

(*a*) the Register shall be made available for inspection by a person at such times and in such manner as may be prescribed by the Minister, and

(*b*) where a request is made to the Controller for a certified or uncertified copy of, or extract from, an entry in the Register, the Controller shall issue a copy of the entry or extract to the applicant.

(4) An application for registration or renewal of a registration of a licensing body shall be made to the Controller in such form and manner as may be prescribed by the Minister and shall be subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance.

(5) The Controller shall register an applicant or renew a registration where the Controller is satisfied that—

(*a*) the applicant complies with the definition of a licensing body specified in *section 38* or *149*, and

[3]OJ No. L310, 26.11.2015, p.1

(*b*) the applicant has provided such information and satisfied such conditions as may be prescribed by the Minister for the purposes of registration.

(6) The information prescribed under *paragraph (b)* of *subsection (5)* and supplied by the applicant for registration shall be placed on the Register, and applicants may apply to the Controller to have such information revised from time to time as circumstances may require.

(7) The information to be prescribed by the Minister under *subsection (5)(b)* shall include, as appropriate, the following—

(*a*) the name of the applicant;

(*b*) the address of the applicant;

(*c*) the names of the chairperson and other members of the board or officers, or names of partners, as the case may be, of the applicant;

(*d*) a copy of the memorandum and articles of association, or partnership agreement, as the case may be, of the applicant;

(*e*) details of the scheme;

(*f*) details of the scales of charges or proposed charges to be levied by the applicant;

(*g*) the class of rightsowners represented or proposed to be represented by the applicant; F99**[**...**]**

(*h*) in the case of a licensing body within the meaning specified in *section 38*, the names of the rightsholder or rightsholders in respect of whom the body concerned claims entitlement to receive payments under F100**[**that section;**]**

F101**[**(*i*) in the case of a licensing body in relation to which any provisions of the European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016 (referred to in this section as "Regulations of 2016") apply, a statement of compliance and appropriate supporting evidence.**]**

F101**[**(7A) In this section and *section 179*—

"statement of compliance" means a document, in electronic form and signed by a person authorised by the licensing body, stating that the licensing body has complied, is complying and will comply with the requirements imposed on it by the Regulations of 2016 to the extent specified in the document;

"appropriate supporting evidence" means information supporting the statements made in the statement of compliance.

(7B) The conditions referred to in *subsection (5)(b)* shall include, in the case of a licensing body in relation to which any provisions of the Regulations of 2016 apply—

(*a*) that the licensing body has provided such further information as the Controller may require (in addition to that contained in the statement of compliance and provided as part of the appropriate supporting evidence) for ascertaining whether the licensing body has complied, is complying and will comply with requirements imposed on it by the Regulations of 2016, and

(*b*) that the statement of compliance of the licensing body, together with the appropriate supporting evidence and any further information provided by the licensing body, satisfies the Controller that the licensing body has complied, is complying and will comply with requirements imposed on it by the Regulations of 2016.**]**

(8) On the registration or renewal of a registration of a licensing body, the Controller shall issue to the applicant a certificate of registration in such form as the Controller shall determine.

Proof that licensing body may act on behalf of specified classes.

176.—A certificate granted under *section 175(8)* shall include the particulars specified in *subsection (7)* of that section and the certificate shall be evidence of the right of the licensing body, until the contrary is proved, to act on behalf of the classes of rightsowners for whom it claims representation rights or on behalf of the rightsowners who have assigned rights to it, or exclusively licensed it, as specified in that certificate.

Notification of charges.

177.—(1) A licensing body registered under this Part which proposes to impose a charge, otherwise than in accordance with the scales of charges included in an application for registration or for renewal of a registration, shall provide the Controller in writing with details of the proposed charge not less than one month before the charge comes into effect.

(2) The registration of a licensing body which fails to comply with *subsection (1)* is deemed to be cancelled from the date on which the proposed charge comes into effect.

Validity of certificates of registration.

178.—(1) A certificate of registration issued under *section 175(8)* shall be valid for 12 months from the date of registration or such lesser period as may be specified by the Controller in the certificate.

(2) Subject to *section 175(4)*, a licensing body registered under this Part may apply for renewal of its registration for further periods each of which shall not exceed 12 months.

(3) An application for renewal of a registration shall be made not less than one month before the expiration of the period of validity of the certificate of registration.

(4) A term of renewal of a registration shall take effect from the expiration of the previous registration.

Refusal of application.

179.—(1) The Controller may refuse an application for renewal of a registration by a licensing body registered under this Part or cancel the registration of a licensing body where the body no longer fulfils the requirements specified in *section 175(5)*.

F102**[**(1A) The power conferred on the Controller by *subsection (1)* may not be exercised by reason of a failure by a licensing body to provide a statement of compliance or appropriate supporting evidence—

(*a*) if—

(i) the licensing body has, before the expiration of the period of validity of the certificate of registration, submitted to the Controller an application for an extension of the time within which the statement of compliance or appropriate supporting evidence is required to be provided and a satisfactory explanation for the application,

(ii) the Controller has granted an extension of 28 days from the expiration of that period, and

(iii) the failure does not continue beyond the extension,

or

(*b*) unless the Controller has, after the time within which the statement of compliance or appropriate supporting evidence is required to be provided, issued a written notice requiring the person to provide a statement of compliance or appropriate supporting evidence within a specified period and the Controller is satisfied that the notice has not been complied with.**]**

(2) The Controller shall remove a licensing body from the Register where its application for renewal of its registration is refused or its registration is cancelled.

Indemnity for Controller.

180.—No action or other proceedings shall lie or be maintainable against the Controller (except in the case of wilful neglect of duty) in respect of anything done or omitted to be done by him or her in the *bona fide* exercise of any functions, powers or duties conferred or imposed by or under this Chapter.

Obligation of collecting societies to register (copyright).

181.—(1) Any body operating as a licensing body within the meaning specified in *section 38* or *149* shall be obliged to register in accordance with the provisions of this Chapter, and to remain registered for so long as it continues to operate in this capacity.

(2) Any body to which the provisions of *subsection (1)* applies which—

(*a*) fails within six months of the commencement of this Chapter to register under the terms of this Chapter,

(*b*) fails within 2 months of its establishment in the case of a body established after the commencement of this Chapter, to register under the terms of this Chapter, or

(*c*) continues to operate as such a body having been removed from the Register for any reason.

shall be guilty of an offence.

(3) A person guilty of an offence under *subsection (2)* shall be liable—

(*a*) on summary conviction, to a F103**[**class C fine**]**, or to imprisonment for a term not exceeding 12 months, or both, or

(*b*) on conviction on indictment, to a fine not exceeding F103**[**€130,000**]**, or to imprisonment for a term not exceeding 5 years, or both.

CHAPTER 18

Qualification for Copyright Protection

Qualification for copyright protection: general.

182.—(1) Copyright shall not subsist in a work unless the qualification requirements of this Chapter are satisfied in relation to—

(*a*) the author in *section 183*,

(*b*) the country, territory, state or area in which the work was first lawfully made available to the public in *section 184*,

(*c*) in the case of a broadcast or a cable programme, the country, territory, state or area from which the broadcast was made or from which the programme was sent in *section 186*.

(2) *Subsection (1)* shall not apply in relation to the Government or the Oireachtas or to the copyright of prescribed international organisations.

(3) Where the qualification requirements specified in this Chapter or in *section 191*, *193* or *196* are satisfied on one occasion in relation to a work, the copyright in the work shall not cease to subsist by reason of any subsequent event.

Qualification by reference to author.

183.—(1) A work shall qualify for copyright protection where the author was at the material time a qualifying person.

(2) For the purposes of this Part, a qualifying person shall be—

(*a*) an Irish citizen;

(*b*) a citizen or subject of, or an individual domiciled or ordinarily resident in the State, or in any country, territory, state or area to which the relevant provisions of this Part extend;

(*c*) a body incorporated under the law of the State or of any country, territory, state or area to which the relevant provisions of this Part extend;

(*d*) a partnership or unincorporated body formed under the law of the State or of any country, territory, state or area to which the relevant provisions of this Part extend; or

(*e*) any other body in the State or of any country, territory, state or area to which the relevant provisions of this Part extend.

(3) Where provision is made by order under *section 188*, a work shall also qualify for copyright protection where at the material time the author was—

(*a*) a citizen or subject of, or an individual domiciled or ordinarily resident in a country, territory, state or area to which the order relates;

(*b*) a body incorporated under the law of a country, territory, state or area to which the order relates;

(*c*) a partnership or unincorporated body formed under the law of any country, territory, state or area to which the order relates; or

(*d*) any other body in any country, territory, state or area to which the order relates.

(4) Subject to *subsection (5)*, a work of joint authorship shall qualify for copyright protection where at the material time any of the authors satisfies the requirements specified in *subsection (1), (2)* or *(3)*.

(5) Where a work of joint authorship qualifies for copyright protection only under this section, only those authors who satisfy those requirements shall be taken into account for the purposes of—

(*a*) *section 23(1)(a)* (first ownership of copyright; entitlement of author or author's employer);

(*b*) *section 24* (duration of copyright in a literary, dramatic, musical or artistic work or an original database); and

(*c*) *section 88* (anonymous and pseudonymous works; acts permitted), with reference to *section 2* (definition of "anonymous work" and definition of "pseudonymous work"), *section 2(7)* and *(8)* (deemer of authorship to be known), and *section 33* (expiry of copyright).

(6) The material time in relation to a literary, dramatic, musical or artistic work or an original database, shall be—

(*a*) in the case of a work which has not been lawfully made available to the public, when the work was made or, where the making of the work extended over a period, a substantial part of that period; or

(*b*) in the case of a work which has been lawfully made available to the public, when the work was first lawfully made available to the public or, where the author had died before that time, immediately before his or her death.

(7) The material time in relation to other descriptions of work shall be as follows:

(*a*) in the case of sound recording or film, when the sound recording or film 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 first lawfully included in a cable programme service;

(*d*) in the case of the typographical arrangement of a published edition, when the edition was first lawfully made available to the public.

Qualification for copyright protection: specific.

184.—(1) A literary, dramatic, musical or artistic work, sound recording, film, typographical arrangement of a published edition or an original database, shall qualify for copyright protection where it is first lawfully made available to the public—

(*a*) in the State; or

(*b*) in any country, territory, state or area to which the relevant provision of this Part extends.

(2) For the purposes of this section, lawfully making available to the public a work in one country, territory, state or area shall be deemed to be the first lawful making available to the public of the work even where the work is simultaneously lawfully made available to the public elsewhere; and for this purpose, lawfully making available to the public of a work elsewhere within the previous 30 days shall be deemed to be simultaneous.

Territorial waters and Continental Shelf.

185.—For the purposes of this Part—

F104**[**(*a*) acts undertaken in, or, under or over—

(i) the waters in the portion of the sea which comprise the territorial sea of the State,

(ii) the waters in all areas of the sea to which the internal or inland waters of the State are extended by section 8 of the Maritime Jurisdiction Act 2021, and

(iii) the waters in any area which is for the time being a designated area within the meaning of the Maritime Jurisdiction Act 2021,**]**

and

(*b*) acts undertaken on an Irish ship, aircraft or hovercraft registered under the laws of the State,

shall be deemed to have been undertaken in the State.

Qualification for copyright in broadcasts and cable programmes.

186.—A broadcast shall qualify for copyright protection where it is lawfully made from, and a cable programme shall qualify for copyright protection where it is first sent from a place—

(*a*) in the State, or

(*b*) in any country, territory, state or area to which the relevant provisions of this Part extend.

Prohibition on contravention of certain international obligations.

187.—The Government shall not exercise the power to make regulations provided for by *section 190*, in relation to a country, territory, state or area in contravention of obligations entered into under any bilateral or multilateral copyright or related rights convention to which the State is a party or of any obligations incurred by the State pursuant to the EEA Agreement.

Extension of this Part by order.

188.—(1) The Government may make an order to extend the provisions of this Part and, in particular, the provisions as to qualification of works for copyright protection in *section 183, 184* and *186*, to any convention country, territory, state or area.

(2) The effect of the extension of copyright protection specified in *subsection (1)*, may, where so stated in the *Third Schedule*, apply to a specified part or parts of the international multilateral agreement, treaty or convention in question.

(3) The Government may, by order, add to or delete from the list of agreements, international multilateral agreements, treaties or conventions contained in the *Third Schedule*, or specify such part or parts of the said multilateral agreements, treaties or conventions to which the extension of protection shall apply in accordance with

the terms of *subsection (2)*, having regard to the obligations of the State under relevant multilateral agreements, treaties and conventions.

(4) The effect of the extension of the provisions of *sections 183, 184* and *186* relating to qualification of works for copyright protection under the terms of this section shall be that works qualifying for copyright protection by reference to their authors or geographical provenance under the equivalent provisions of the law of a country, territory, state or area party to an agreement, treaty or convention named in the *Third Schedule* shall qualify for copyright protection under Irish law, to the same degree as if they (those works) had qualified for such protection directly under *sections 183, 184* and *186*.

(5) For the purposes of this section, "convention country, territory, state or area" means a convention country, territory, state or area which is a party to a multilateral agreement, treaty or convention relating to copyright to which the State is also a party, and which is specified in the *Third Schedule*.

Orders to be made for countries other than convention countries, etc.

189.—(1) The Government may by order make provision for applying in relation to a country, territory, state or area, other than a convention country, territory, state or area within the meaning of *section 188(5)*, all or any of the provisions of this Part specified in the order, so as to secure that those provisions apply in relation to—

(*a*) individuals who are citizens or subjects of, or who are domiciled or ordinarily resident in, that country, territory, state or area as they apply to persons who are domiciled or ordinarily resident in the State,

(*b*) bodies incorporated under the law of that country, territory, state or area as they apply in relation to bodies incorporated under the law of the State,

(*c*) partnerships or unincorporated bodies formed under the law of that country, territory, state or area as they apply in relation to partnerships or unincorporated bodies formed under the law of the State,

(*d*) any other bodies in that country, territory, state or area as they apply in relation to such bodies in the State,

(*e*) literary, dramatic, musical or artistic works, sound recordings, films, typographical arrangement of a published edition or original databases first made available to the public in that country, territory, state or area as they apply in relation to such works first made available to the public in the State, or

(*f*) broadcasts made from or cable programmes sent from that country, territory, state or area as they apply in relation to broadcasts made from or cable programmes sent from the State.

(2) An order made under this section may make provision for all or any of the matters referred to in *subsection (1)* and may—

(*a*) apply any provision 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) The Government shall not make an order under this section in relation to a country, territory, state or area unless satisfied that provision has been or will be made under the law of that country, territory, state or area, in respect of the class of works to which the order relates, giving adequate protection to the owners of copyright under this Part.

(4) The Government may by order revoke or amend any order made under this section, including an order under this subsection.

Restriction of rights by order.

190.—(1) Where the protection of Irish copyright law has been extended to a country, territory, state or area under the provisions of *section 189*, and it appears to the Government that Irish works or one or more classes of those works are not adequately protected in that country, territory, state or area, the Government may by order restrict the rights conferred by this Part in relation to works of authors connected with that country, territory, state or area.

(2) In an order made under *subsection (1)*, the Government shall designate the country, territory, state or area concerned and provide that, for the purposes specified in that order, a work shall not qualify for copyright protection after the date specified in the order where that work is made at a time when the author is—

(*a*) a citizen or subject of that country, territory, state or area (who is not at the same time domiciled or ordinarily resident in the State),

(*b*) a body incorporated under the law of that country, territory, state or area,

(*c*) a partnership or unincorporated body formed under the law of that country, territory, state or area, or

(*d*) any other body of that country, territory, state or area,

and the order may make such provision for all the purposes of this Part or for such purposes as are specified in that order, and either generally or in relation to such class or classes of cases as are specified in that order, having regard to the nature and extent of the deficiency of protection referred to in *subsection (1)*.

(3) In this section "Irish works" means works of which the author was at the material time within the meaning of *section 183*.

CHAPTER 19

Government and Oireachtas Copyright

Government copyright.

191.—(1) Where a work is made by an officer or employee of the Government or of the State, in the course of his or her duties, the work qualifies for copyright protection notwithstanding the provisions relating to the requirements as to qualification for copyright protection specified in *section 182*.

(2) The Government shall be the first owner of the copyright in a work to which *subsection (1)* applies.

(3) The copyright in a work to which *subsection (1)* applies shall be known and in this Act referred to as "Government copyright", notwithstanding that the copyright may be, or may have been, assigned to another person.

(4) Government copyright in a work shall expire 50 years from the end of the calendar year in which the work was made.

(5) In the case of a work of joint authorship where one or more but not all of the authors is a person to whom *subsection (1)* applies, this section applies in relation to those persons and the copyright subsisting by virtue of their contribution to the work.

(6) Subject to *subsections (1)* to *(5)*, this Part applies in relation to Government copyright as to other copyright.

(7) Where Oireachtas copyright subsists in a work this section shall not apply.

Copyright in Acts, etc.

192.—(1) The copyright in any Bill or enactment vests in the Houses of the Oireachtas.

(2) The copyright provided for in this section subsists from the date of the first lawful making available to the public of the work and shall expire 50 years from the end of the calendar year in which the work was so made available.

Houses of the Oireachtas: copyright.

193.—(1) Where a work is made by or under the direction or control of either or both of the Houses of the Oireachtas—

(*a*) the work qualifies for copyright protection notwithstanding the provisions relating to the requirements as to qualification for copyright protection specified in *section 182*, and

(*b*) the House of the Oireachtas by whom, or under whose direction or control, the work is made shall be the first owner of any copyright in the work, and where the work is made by or under the direction or control of both Houses of the Oireachtas, each House shall be joint first owners of the copyright.

(2) The copyright in a work to which this section applies shall be known and in this Act referred to as "Oireachtas copyright", notwithstanding that the copyright may be, or may have been, assigned to another person.

(3) Oireachtas copyright in a work shall expire 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 either or both of the Houses of the Oireachtas include—

(*a*) any work made by an officer or employee of either House of the Oireachtas in the course of his or her duties, and

(*b*) any sound recording, film, live broadcast or live cable programme of the proceedings of either House of the Oireachtas.

(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 either or both of the Houses of the Oireachtas, this section applies in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

(6) Subject to *subsections (1)* to *(5)*, this Part applies in relation to Oireachtas copyright as to other copyright.

Oireachtas copyright.

194.—(1) Subject to *subsections (2)* and *(3)*, a permission to copy or to make available to the public any work, Act of the Oireachtas, Bill or other material protected by Oireachtas copyright under the provisions of this Chapter may be granted to any person.

(2) The conditions upon which any work, Act of the Oireachtas, Bill or other material protected by Oireachtas copyright may be made available under this Chapter shall be those imposed from time to time on such materials by the Ceann Comhairle of Dáil Éireann and the Cathaoirleach of Seanad Éireann or an officer or employee of the Houses of the Oireachtas duly authorised for that purpose by the Ceann Comhairle of Dáil Éireann and the Cathaoirleach of Seanad Éireann.

(3) The conditions upon which any work, Act of the Oireachtas, Bill or other material protected by Oireachtas copyright may be made available under this Chapter shall be laid before each House of the Oireachtas as soon as may be after they have been imposed.

Houses of the Oireachtas: supplementary provisions with regard to copyright.

195.—For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, each of the Houses of the Oireachtas shall be deemed to have, and to have had, the legal capacities of a body corporate, which is not affected by a dissolution of either or both of the Houses of the Oireachtas.

CHAPTER 20

International Organisations

Copyright vesting in certain international organisations.

196.—(1) Notwithstanding that a work—

(*a*) is made by an officer or employee of, or is lawfully made available to the public by, a prescribed international organisation to which this section applies, and

(*b*) does not qualify for copyright protection under *section 182*,

copyright subsists in the work by virtue of this section and the organisation concerned shall be the first owner of that copyright.

(2) The Government may prescribe the international organisations to which this section applies.

(3) Where an international organisation in respect of which an order has been made under *subsection (2)* is the first owner of the copyright in a work by virtue of this section, the copyright in that work shall expire 50 years from the end of the calendar year in which the work was made or shall subsist for such longer period as the Government may by order specify for the purpose of complying with the international obligations of the State.

(4) An international organisation prescribed under *subsection (2)* shall be deemed to have, and to have had, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright and in connection with all legal proceedings relating to copyright.

CHAPTER 21

Anonymous Works

Works of folklore.

197.—(1) Where, in the case of an anonymous work which has not been lawfully made available to the public, there is evidence that the author (or, in the case of a work of joint authorship, any of the authors) complied with the requirements for copyright protection specified in *section 182* by having a connection with a country, territory, state or area other than the State, it shall be presumed until the contrary is proved that copyright subsists in the work.

(2) Where, under the law of a country, territory, state or area, a body is appointed to protect and enforce copyright in a work referred to in *subsection (1)*, the Minister may by order designate that body for the purposes of this section.

(3) A body designated by order under *subsection (2)* shall be recognised in the State as having authority to protect and enforce copyright in a work referred to in *subsection (1)* in the place of the owner of the copyright, other than the authority to assign the copyright in the work and the body may bring proceedings relating to copyright in its own name.

(4) This section shall not apply where there has been an assignment of the copyright in a 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 or her.

CHAPTER 22

Deposit of Certain Copyright Materials

Delivery of certain materials to libraries.

198.—(1) The publisher of any book first published in the State after the commencement of this section or, in the case of the authority specified in *paragraph (a)*, the publisher of any book published in the State, shall, within one month after the publication, deliver, at his or her own expense, a copy of the book to each of the following—

(*a*) the authority having control of the National Library of Ireland,

(*b*) the authority having control of the library of Trinity College, Dublin,

(*c*) the authority having control of the library of the University of Limerick,

(*d*) the authority having control of the library of Dublin City University, and

(*e*) the Board of the British Library,

and four copies of the book for or in accordance with the directions of the authority having control of the National University of Ireland for use in the four constituent universities of that University.

(2) Boards and authorities taking delivery of books under *subsection (1)* shall give a written receipt for every book delivered to them under that subsection.

(3) The Minister may, on an application of a Board or authority referred to in *subsection (1)*, make regulations exempting from *subsection (1)* in respect of the Board or authority making the application, publications wholly or mainly in the nature of trade advertisements, or any class of work as may be specified in those regulations, and it shall not be necessary for the publisher of any publication so excepted to deliver the publication to that Board or authority or for such Board or authority to give a receipt unless as respects any particular publication a written demand for the delivery of that work is made by the Board or authority concerned.

F105**[**(4) Where, on or after the commencement of section 29 of the Copyright and Other Intellectual Property Law Provisions Act 2019, *subsection (1)* applies to the publisher of a book referred to in that subsection, a Board or authority referred to in that subsection may, by notice in writing given to the publisher, request that the copy or copies of the book that the Board or authority is entitled to have delivered to it under that subsection be delivered to it in physical form or electronic form, or both, and the publisher shall comply with that request unless the publisher has already given the copy or copies in the form or forms requested before the publisher received that notice.

(4A) (*a*) Where, on or after the commencement of section 29 of the Copyright and Other Intellectual Property Law Provisions Act 2019, a digital publication is first published in the State by a publisher, a Board or authority referred to in *subsection (1)* may, by notice in writing given to the publisher, request that the publisher comply with that subsection, in so far as that subsection relates to the Board or authority making the request, as if the digital publication were a book referred to in that subsection and the publisher shall comply with that request and *subsection (2)* shall be construed accordingly.

(*b*) In *paragraph (a)*, "digital publication" means any publication published online or offline which is made available to the public in a medium other than print (including any publication in any digital or electronic or other technological form, but does not include any sound recording or film or any combination thereof).**]**

(5) The publisher of any book first published in the State after the commencement of this section shall, where a demand is made in writing by the authority having control of each of the following libraries—

(*a*) the Bodleian Library, Oxford,

(*b*) the University Library, Cambridge,

(*c*) the National Library of Scotland, and

(*d*) the National Library of Wales,

before the expiration of 12 months after the book is published, deliver within one month after receipt of that written demand or, where the demand was so made before the book was published, within one month after publication, to an address in Dublin named in the demand a copy of that book for, or in accordance with the directions of, that authority.

(6) In the case of an encyclopaedia, newspaper, review, magazine or work published in a series of numbers or parts, the written demand referred to in *subsection (5)* may include all numbers or parts of the work which may subsequently be published.

(7) A copy of a book delivered to the authority having control of the National Library of Ireland or the Board of the British Library pursuant to this section shall be a copy of the whole book with all maps and illustrations belonging to that book and, subject to *subsection (4)*, finished in the same manner as the copy in that form which is superior in quality to any other copy in that form of the book available.

(8) A copy of a book delivered to any of the authorities referred to in this section, other than those referred to in *subsection (7)*, pursuant to this section, shall be in the form specified by the Board or authority, which shall be one of the forms in which the book has been published, and shall be in like condition as that form of the book.

(9) Where a publisher fails to comply with this section he or she shall be guilty of an offence and shall be liable on summary conviction to a F106**[**class D fine**]** and in addition the person shall be liable to be ordered to comply with this section.

(10) For the purposes of this section, "book" includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, plans, prints or other engravings belonging thereto.

(11) Where a copy of a book requested under *subsection (1)* is delivered in a form other than an electronic form, the Board or other authorities referred to in *subsection (1)* may request, in addition to that copy, a copy in an electronic form readable by means of an electronic retrieval system and on such request being made a copy in electronic form shall be delivered by the publisher to the Board or authority concerned.

(12) For the purposes of this section, "publication", in relation to a book—

(*a*) means the issue of copies to the public, and

(*b*) includes its making available to the public by means of an electronic retrieval system,

and related expressions shall be construed accordingly.

CHAPTER 23

Amendment of National Cultural Institutions Act, 1997, and Miscellaneous Repeals

Amendment of sections 65 and 66 of the National Cultural Institutions Act, 1997.

199.—Sections 65 and 66 of the National Cultural Institutions Act, 1997, are hereby amended by the substitution of the following sections therefor:

"65.—(1) Subject to the provisions of this section, the publisher of any material to which this section applies shall, within one month or such longer period as the authority having control of the National Library of Ireland may allow after its publication, deliver at his or her own expense, a copy of the material to that authority and the authority shall give a written receipt to the publisher for any and all such material delivered to them.

(2) The publisher of material to which this section applies that relates wholly or mainly to Ireland shall, if a written demand for any such material is made by the authority referred to in *subsection (1)* not later than 12 months after its publication, deliver a copy of the material to that authority within one month after receipt of the demand or, if the demand was made before its publication, within one month or such longer period as the authority may in any particular case allow after its publication.

(3) The Minister, following consultation with the Minister for Enterprise, Trade and Employment, may make such regulations as he or she considers appropriate in relation to the quality and format of material to which this section applies in cases

where the copies of such material are not of uniform quality or can be published in different formats.

(4) Where a publisher fails to comply with this section, he or she shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 and to pay such sum not exceeding the value of the material as the court may decide which shall be paid to the trustees or authority to whom the material should have been delivered.

(5) In this section:

'material to which this section applies' means material that is of such class as may be specified in regulations made by the Minister, following consultation with the Minister for Enterprise, Trade and Employment, and in this definition, 'material' includes any engraving, photograph, text of a play, cinematograph film, microfilm, video recording, sound recording, record, diskette, magnetic tape, compact disc, or other thing on or in which works or information or the representations thereof is written, recorded, stored or reproduced but does not include local records or local archives within the meaning, in each case, of section 65 of the Local Government Act, 1994, or books within the meaning of *section 198* of the *Copyright and Related Rights Act, 2000*;

'publisher', for the purposes of this section, means a person who issues to the public, or makes available to the public by means of an electronic retrieval system, material to which this section applies;

'work', for the purposes of this section, has the meaning assigned to it by *section 2* of the *Copyright and Related Rights Act, 2000*.

(6) This section shall apply only to material concerned substantially or primarily with Ireland. In cases of doubt, the certification of the Minister to the effect that material is concerned substantially or primarily with Ireland shall satisfy the requirements of this subsection.

(7) The Minister, following consultation with the Minister for Enterprise, Trade and Employment, may by order apply this section, with such modifications and adaptations as he or she considers necessary, to one or more of the institutions or bodies referred to in *section 198* of the *Copyright and Related Rights Act, 2000*.

(8) Section 6 of the Dublin City University Act, 1989, and section 7 of the University of Limerick Act, 1989, are hereby repealed.".

CHAPTER 24

Copyright: Legal Tender

Copyright in Irish legal tender notes, euro notes, consolidated bank notes and in Irish and euro coins.

200.—(1) Notwithstanding anything contained in this Part and subject to *subsection (2)*, the copyright in legal tender notes issued, whether before or after the commencement of this section, by the Central Bank of Ireland (in this section referred to as "the Bank") or issued before such commencement by the Currency Commission, shall be perpetual and vests in the Bank.

(2) This Part is without prejudice to the copyright of the European Central Bank in legal tender notes denominated in the euro unit.

(3) Notwithstanding anything contained in this Part, the copyright in consolidated bank notes issued before the commencement of this section by the Bank or by the Currency Commission shall be perpetual and vests in the Bank.

(4) Notwithstanding anything contained in this Part, the copyright in coins issued under the Coinage Act, 1926, gold coins issued under the Currency Act, 1927, coins issued under the Coinage Act, 1950, and coins issued under the Decimal Currency Acts, 1969 to 1990, and the copyright in the artistic work defining the design of any such coin shall be perpetual and vests in the Minister for Finance.

(5) (*a*) This Part is without prejudice to the copyright of the European Community in the common face of coins denominated in euro or in cent, and in the

artistic work defining the design of any such face, or to the assignment of that copyright by the Commission of the European Communities on behalf of the European Community.

(*b*) Notwithstanding anything contained in this Part, the copyright in the national face of coins issued under section 11 of the Economic and Monetary Union Act, 1998, and the copyright in the artistic work defining the design of any such face shall be perpetual and vests in the Minister for Finance.

(*c*) Notwithstanding anything contained in this Part, the copyright in all coins issued under Part III of the Economic and Monetary Union Act, 1998, and the copyright in the artistic work defining the design of any such coin shall be perpetual and vests in the Minister for Finance.

(6) In the application of *section 37(3)* to any legal tender note or consolidated bank note or any coin to which this section applies, references in that subsection to the work as a whole or to any substantial part thereof shall be construed as references to the note or coin as a whole or to any part thereof.

(7) *Chapter 6* of this Part shall not apply in relation to the copyrights referred to in this section.

(8) Coins to which this section applies and the artistic work defining the design of any such coin shall be deemed, for the purposes of section 172 of the Act of 1927, not to be designs.

(9) This section applies to coins issued under the Coinage Act. 1926, gold coins issued under the Currency Act, 1927, coins issued under the Coinage Act, 1950, coins issued under the Decimal Currency Acts, 1969 to 1990, and coins issued under the Economic and Monetary Union Act, 1998.

CHAPTER 25

Disposal of Certain Books

Disposal of books of King's Inns Library, Dublin.

201.—Notwithstanding anything contained in the King's Inns Library Act, 1945, or the enactments referred to in that Act or the Copyright Act, 1801, or the Copyright Act, 1836, the Benchers of the Honorable Society of King's Inns may sell or exchange any of the books of the King's Inns Library, Dublin, whether acquired before or after the commencement of this section.

PART III

RIGHTS IN PERFORMANCES

CHAPTER 1

Performers' Rights

Interpretation.

202.—(1) In *Parts III* and *IV*, "performance" means a performance of any actors, singers, musicians, dancers or other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform literary, dramatic, musical or artistic works or expressions of works of folklore, which is a live performance given by one or more individuals, and shall include a performance of a variety act or any similar presentation.

(2) A performance of a literary work includes a reading or recitation.

(3) A performance of a dramatic work includes a choreographic work or a work of mime.

(4) In *Parts III* and *IV*, "recording", in relation to a performance, means any fixation—

(*a*) made directly or indirectly from the live performance,

(*b*) made from a broadcast of, or cable programme including, the performance, or

(*c*) made directly or indirectly from another recording of the performance.

(5) The rights conferred by *Parts III* and *IV* are independent of—

(*a*) the copyright in, or the rights conferred by *Chapter 7* of *Part II* relating to, any work performed or any fixation of, or broadcast or cable programme including, the performance, and

(*b*) other rights or obligations arising otherwise than under *Parts III* and *IV*.

Performers' rights: general.

203.—(1) A performer has the exclusive right to authorise or prohibit—

(*a*) the making of a recording of the whole or any substantial part of a qualifying performance directly from the live performance,

(*b*) the broadcasting live, or including live in a cable programme service, of the whole or any substantial part of a qualifying performance, or

(*c*) the making of a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of, or cable programme including, the live performance.

(2) The rights of a performer conferred by this section are infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake any of the acts referred to in *subsection (1)*.

(3) The rights of a performer conferred by this section are not infringed by the making of a recording referred to in *subsection (1) (c)* by a person for his or her private and domestic use.

(4) Where a recording, which would otherwise be an illicit recording, is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(5) In an action for infringement of the rights of a performer brought under this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he or she did not know and had no reason to believe that consent had not been given.

Reproduction right of performer.

204.—(1) A performer has the exclusive right to authorise or prohibit the making of a copy of a recording of the whole or any substantial part of a qualifying performance and it is immaterial whether the copy is made directly or indirectly.

(2) There shall be a right of a performer conferred by this section which shall be known and in this Part referred to as the "reproduction right".

(3) The reproduction right is infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake the act referred to in *subsection (1)*.

(4) The reproduction right is not infringed by the making of a copy referred to in *subsection (3)* by a person for his or her private and domestic use.

(5) Where a copy, which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(6) For the purposes of *Parts III* and *IV*, references to the making of a copy of a recording or to copying shall include the making of a temporary or permanent copy of a recording and the storing of a recording in any medium.

Making available to public copies of recordings of qualifying performances.

205.—(1) Subject to *subsection (2)*, a performer has the exclusive right to authorise or prohibit the making available to the public of copies of a recording of the whole or any substantial part of a qualifying performance and it is immaterial whether the copy is made directly or indirectly.

(2) Where a copy of a sound recording is—

(*a*) played in public, or

(*b*) included in a broadcast or cable programme service,

the right conferred by this section shall be deemed to be satisfied by the payment of equitable remuneration as specified in *section 208*.

(3) A reference in *Parts III* and *IV* to the making available to the public of copies of a recording shall include the making available to the public of the original recording of the live performance.

(4) There shall be a right conferred by this section which shall be known and in *Parts III* and *IV* referred to as the "making available right".

(5) A reference in *Parts III* and *IV* to the making available to the public of copies of a recording of a qualifying performance shall include—

(*a*) making available to the public of copies of a recording, by wire or wireless means, in such a way that members of the public may access the recording from a place and at a time individually chosen by them, including the making available of copies of recordings through the Internet,

(*b*) showing or playing a copy of the recording in public,

(*c*) broadcasting a copy of the recording,

(*d*) including a copy of the recording in a cable programme service,

(*e*) issuing copies of the recording to the public,

(*f*) renting copies of the recording, or

(*g*) lending copies of the recording F107**[**...**]**.

(6) The making available right is infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake any of the acts referred to in *subsection (5)*.

(7) Subject to *subsection (8)*, the provision of facilities for enabling the making available to the public of copies of a recording of a performance shall not of itself constitute an act of making available to the public of copies of the recording.

(8) Without prejudice to *subsection (7)*, where a person who provides facilities referred to in that subsection is notified by the rightsowner that those facilities are being used to infringe any of the rights conferred by *Parts III* and *IV* and that person fails to remove that infringing material as soon as is practicable thereafter, that person shall also be liable for the infringement.

(9) Without prejudice to *subsection (8)*, the Minister may prescribe the form of the notice to be given under that subsection and the form shall specify—

(*a*) the name and address of the person claiming to be the owner of the rights in the recording concerned,

(*b*) the grounds that the person requesting the removal of material has for such removal, and

(*c*) a list of the material which is to be removed.

F108**[**(9A)(*a*) The rightsowner of any right conferred by *Parts III* and *IV* may, in respect of that right, apply to the High Court for an injunction against an intermediary to whom paragraph 3 of Article 8 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001[1] on the harmonisation of certain aspects of copyright and related rights in the information society applies.

(*b*) In considering an application for an injunction under this subsection, the court shall have due regard to the rights of any person likely to be affected by virtue of the grant of any such injunction and the court shall give such directions (including, where appropriate, a direction requiring a person be notified of the application) as the court considers appropriate in all of the circumstances.**]**

(10) Where the making available right is infringed by a copy of a recording being played or shown in public, by means of apparatus for receiving sounds, images or data or any combination of sounds, images or data, or the representations thereof, conveyed by any means, the person by whom sounds, images or data or any combination of sounds, images or data, or the representation thereof, are sent shall not be regarded as liable for the infringement.

Distribution right of performers.

206.—(1) References in *Parts III* and *IV* to the issue of copies of a recording to the public shall be construed as including—

(*a*) the act of putting into circulation in a Member State of the EEA copies of a recording not previously put into circulation in a Member State of the EEA by or with the consent of the performer, or

(*b*) the act of putting into circulation outside the Member States of the EEA copies of a recording not previously put into circulation in a Member State of the EEA or elsewhere.

(2) Without prejudice to the rental right or the lending right, references in this Part to the issue of copies of a recording to the public shall not include—

(*a*) any subsequent circulation of copies of a recording previously put into circulation, or

(*b*) any subsequent importation of such copies of a recording into the State of any other Member State of the EEA,

except in so far as *subsection (1) (a)* applies to putting into circulation in the Member States of the EEA copies of a recording previously put into circulation outside the Member States of the EEA.

(3) A reference in this section to circulation shall include sale, rental or loan.

(4) A performer has the exclusive right to authorise or prohibit the issue of copies of a recording to the public of the whole or any substantial part of a qualifying performance.

(5) There shall be a right conferred by this section which shall be known and in this Part referred to as the "distribution right".

(6) The distribution right is infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake the acts referred to in *subsection (4)*.

Rental and lending right of performer.

207.—(1) References in *Parts III* and *IV* to "rental" or "lending" Rental and lending shall not be construed as including the making available to the public of copies of a recording for the purposes of—

(*a*) playing or showing in public, broadcasting or inclusion in a cable programme service,

(*b*) exhibiting in public, or

[1] OJ No. L. 167, 22.6.2001, p.10.

(*c*) on the spot reference use.

(2) F109**[**Subject to *subsection (3A)*, a**]** performer has the exclusive right to authorise or prohibit the rental or lending of copies of a recording of the whole or any substantial part of his or her qualifying performance.

(3)(*a*)There shall be right of the performer to authorise or prohibit the rental of copies of a recording which shall be known and in *Parts III* and *IV* referred to as the "rental right".

(*b*) F109**[**Subject to *subsection (3A)*, there**]** shall be a right of the performer to authorise or prohibit the lending of copies of a recording which shall be known and in *Parts III* and *IV* referred to as the "lending right".

F110**[**(3A) The lending right in relation to a recording does not apply at any time in a period during which a scheme for the remuneration of authors is in effect, pursuant to *section 42A*, in relation to works of a class in which that recording is included, whether the performer, or (in the case of a recording of a performance by a number of performers) any of the performers, is a participant in that scheme or not.**]**

(4) The rental right is infringed by a person who, without the consent of the performer, rents or authorises another to rent copies of a recording of the whole or any substantial part of a qualifying performance.

(5) The lending right is infringed by a person who, without the consent of the performer, lends or authorises another to lend copies of a recording of the whole or any substantial part of a qualifying performance.

(6) In *Parts III* and *IV*, and subject to *subsections (7)* and *(8)*—

(*a*) "rental" means making a copy of a recording available for use on terms that it will or may be returned after a limited period of time, for direct or indirect economic or commercial advantage;

(*b*) "lending" means making a copy of a recording available for use on terms that it will or may be returned after a limited period of time, otherwise than for direct or indirect economic or commercial advantage, through an establishment to which members of the public have access.

(7) The making of a copy of a recording available between establishments to which members of the public have access shall not infringe any of the rights conferred by *Parts III* and *IV*.

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

Right to equitable remuneration for exploitation of sound recording.

208.—(1) A performer has a right to equitable remuneration from the owner of the copyright in a sound recording where the sound recording of the whole or any substantial part of a qualifying performance which has been made available to the public for commercial purposes is—

(*a*) played in public, or

(*b*) included in a broadcast or cable programme service.

F111**[**(1A) Where the copyright of the producer in a sound recording has expired pursuant to *section 299A(3)*, the performer in the sound recording has, subject to *subsection (1B)*, a right to equitable remuneration from the person who—

(*a*) plays the sound recording in public, or

(*b*) includes the sound recording in a broadcast or cable programming service.

(1B) The period during which the performer is entitled to equitable remuneration after the expiry of the producer's copyright pursuant to *section 299A(3)*, is the period of copyright that would have remained pursuant to *section 26*, had the

copyright of the producer in the sound recording not expired pursuant to *section 299A(3)*.**]**

(2) A performer shall not assign the right to equitable remuneration under this section except to a collecting society for the purpose of enabling the collecting society to exercise that right on his or her behalf.

(3) The right to equitable remuneration is transmissible by testamentary disposition or by operation of law, as personal or moveable property, and it may be assigned or further transmitted, including by assignment, by any person who legally acquires the right.

(4) Subject to *subsections (5)* to *(9)*, the amount of equitable remuneration payable under this section is that which has been agreed by or on behalf of the persons by and to whom it is payable.

(5) In default of agreement as to the amount of equitable remuneration payable, the person by or to whom it is payable may apply to the Controller for an order under *subsection (8)*.

(6) Subject to *subsection (7)*, a person to or by whom equitable remuneration is payable may also apply to the Controller—

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

(*b*) to vary any previous determination of the Controller as to the amount payable.

(7) An application may not be made under *subsection (6)* within 12 months from the date of the previous determination except with the special leave of the Controller.

(8) On an application being made under this section, the Controller shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as he or she may determine to be reasonable in the circumstances, having regard to the importance of the contribution of the performer to the sound recording.

(9) An order made under this section shall have effect from the date on which it is made or such later date as may be specified by the Controller.

(10) An agreement as to the amount of equitable remuneration payable shall be void in so far as it purports—

(*a*) to exclude or restrict the right to equitable remuneration conferred by this section,

(*b*) to prevent a person questioning the amount of equitable remuneration, or

(*c*) to restrict the powers of the Controller conferred by this section.

CHAPTER 2

Infringement of Performers' Rights

Consent required for recording or live transmission of performance.

209.—A person infringes the rights of a performer conferred by *section 203* where he or she, without the consent of the performer—

(*a*) shows or plays in public the whole or any substantial part of a qualifying performance, or

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

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

Meaning of illicit recording.

210.—(1) In *Parts III* and *IV* "illicit recording", in relation to a performance, shall be construed in accordance with this section.

(2) A recording of the whole or any substantial part of a performance shall be an illicit recording where the recording is made without the consent of the performer.

(3) A copy of a recording shall be an illicit recording where its making constitutes an infringement of a performer's property rights in the recording concerned.

(4) Subject to *subsection (5)*, a copy of a recording shall be an illicit recording where—

(*a*) it has been or is to be imported into the State, and

(*b*) its making in the State would have constituted an infringement of a performer's property rights in the recording concerned, or breach of an exclusive licence agreement relating to that recording.

(5) A copy of a recording which previously has been issued to the public in accordance with *section 206* in any other Member State of the EEA by, or with the consent of, the owner of the performers' property rights in the recording, shall not be deemed to be an illicit recording for the purposes of *subsection (4)*.

(6) A recording of the whole or any substantial part of a performance which is subject to an exclusive recording contract shall be an illicit recording where it is made, otherwise than for private and domestic use, without the consent of the person having recording rights or the consent of the performer.

(7) For the purposes of *sections 258* and *260*, a recording shall be deemed to be an illicit recording where it is an illicit recording for the purposes referred to in *subsections (2), (3), (4)* and *(5)* of this section.

Presumptions.

211.—Where in any proceedings for infringement of any right conferred by *Part III* or *IV* the question arises as to whether a recording is an illicit recording and it is shown that—

(*a*) the recording is a recording of the performance concerned, and

(*b*) rights conferred by *Parts III* and *IV* subsist or have subsisted at any time in the recording,

it shall be presumed until the contrary is proved that the recording was made at a time when such rights subsisted.

F115[Presumption relevant to civil proceedings.

211A.—In civil proceedings for infringement of the rights in a performance under this Part, where copies of a recording of the performance as issued to the public bear a statement that a named person was the performer, the statement shall be admissible as evidence of the fact stated and shall be presumed to be correct, unless the contrary is proved.]

Secondary infringement: importing, possessing or dealing with illicit recordings.

212.—(1) A person infringes the rights of a performer conferred by *section 203* where he or she, without the consent of the performer—

(*a*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*b*) imports into the State, otherwise than for his or her private and domestic use,

(*c*) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or

(*d*) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the performer,

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

(2) Where, in an action brought under this section for infringement of the rights of a performer, a defendant shows that the illicit recording was innocently acquired by him or her or his or her predecessor in title, the only remedy available against the defendant in respect of the infringement shall be an award of damages not exceeding a reasonable payment in respect of the act complained of.

(3) In *Parts III* and *IV* "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

Secondary infringement: providing means for making illicit recording.

213.—A person infringes the rights of a performer conferred by *section 203* where he or she without the consent of the performer—

(*a*) makes,

(*b*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*c*) imports into the State, or

(*d*) has in his or her possession, custody or control,

an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings.

Secondary infringement: permitting use of apparatus for infringing performances.

214.—Where the rights of a performer conferred by this Part are infringed by a public performance of a recording of the performance, or by playing or showing the recording in public, by means of apparatus for—

(*a*) playing sound recordings,

(*b*) showing films, or

(*c*) receiving sounds or images or any combination of sounds or images, or the representations thereof, conveyed by any means,

the following persons shall also be liable for the infringement—

(i) a person who supplied the apparatus, or any substantial part thereof if, when he or she supplied the apparatus or part thereof—

(I) he or she knew or had reason to believe that the apparatus was likely to be used to infringe the rights of a performer conferred by this Part, or

(II) in the case of apparatus the normal use of which involves a public performance, playing or showing, he or she had reason to believe that it would be used to infringe the rights of a performer conferred by this Part;

(ii) an owner or occupier of premises who gave permission for the apparatus to be brought onto the premises if, when the owner or occupier gave permission, he or she knew or had reason to believe that the apparatus was likely to be used to infringe the rights of a performer conferred by this Part; and

(iii) a person who supplied a copy of a sound recording or film used to infringe the rights of a performer conferred by this Part if, when the person supplied it, he or she knew or had reason to believe that what was supplied, or a copy made directly or indirectly therefrom, was likely to be used to infringe the rights of a performer conferred by this Part.

CHAPTER 3

Recording Rights

Interpretation.

215.—(1) In *Parts III* and *IV* an "exclusive recording contract" means a contract between a performer and another person under which that person is entitled to the exclusion of all other persons (including the performer) to make recordings of one or more of that performer's performances with a view to their commercial exploitation.

(2) Subject to *subsection (3)*, references in *Parts III* and *IV* to a "person having recording rights", in relation to a performance, are to a person—

(*a*) who is party to and has the benefit of an exclusive recording contract to which the performance is subject, or

(*b*) to whom the benefit of such a contract has been assigned,

and who is a qualifying person.

(3) Where a performance is subject to an exclusive recording contract but the person mentioned in *subsection (2)* is not a qualifying person, references in *Parts III* and *IV* to a "person having recording rights", in relation to the performance, are to a person—

(*a*) who is licensed by the person having recording rights to make recordings of the performance with a view to their commercial exploitation, or

(*b*) to whom the benefit of such a licence has been assigned,

and who is a qualifying person.

(4) In this section "with a view to their commercial exploitation" means with a view to the recordings being sold, rented or lent, or offered or exposed for sale, rental or loan or shown or played in public or otherwise made available to the public for commercial gain.

Infringement of recording rights by copying.

216.—(1) A person infringes the rights conferred by this Part on a person having recording rights in relation to a performance where he or she, without the consent of the performer or of the person having recording rights in relation to the performance, makes a recording of the whole or any substantial part of the performance.

(2) Without prejudice to any other remedy, in an action brought under this section for infringement of the rights referred to in *subsection (1)*, damages shall not be awarded against a defendant who shows that at the time of the infringement he or she did not know and had no reason to believe that consent had not been given.

Infringement of recording rights by use of illicit recording.

217.—(1) A person infringes the rights conferred by this Part on a person having recording rights in relation to a performance where he or she, without the consent of the person having recording rights in relation to the performance or, in the case of a qualifying performance, the consent of the performer—

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

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

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

(2) The reference in *subsection (1)* to the "appropriate consent" is to the consent of—

(*a*) the performer, or

(*b*) the person who, at the time the consent was given, had recording rights in relation to the performance (or, where there was more than one such person, the consent of all of them).

Secondary infringement: importing, possessing or dealing with illicit recording.

218.—(1) A person infringes the rights conferred by this Part on a person having recording rights in relation to a performance where he or she, without the consent of the person having recording rights in relation to the performance or, in the case of a qualifying performance, the consent of the performer—

(*a*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*b*) imports into the State, otherwise than for his or her private and domestic use,

(*c*) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or

(*d*) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the person having recording rights,

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

(2) Where, in an action brought under this section for infringement of the rights conferred by this Part on a person having recording rights, a defendant shows that the illicit recording was innocently acquired by him or her or his or her predecessor in title, the only remedy available against the defendant in respect of the infringement shall be an award of damages not exceeding a reasonable payment in respect of the act complained of.

Secondary infringement: providing means for making illicit recordings.

219.—A person infringes the rights conferred by this Part on a person having recording rights in relation to a performance where he or she, without the consent of the person having recording rights in relation to the performance or, in the case of a qualifying performance, the consent of the performer—

(*a*) makes,

(*b*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*c*) imports into the State, or

(*d*) has in his or her possession, custody or control,

an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings.

CHAPTER 4

Acts Permitted in Relation to Performances

Exemptions in respect of performance.

220.—In this Part an act may be exempted under more than one category of exemption and the exemption of an act under one category of exemption shall not preclude its exemption under another category.

Fair dealing with performances, etc.

F116**[221.**—(1) Fair dealing with a performance or recording for the purposes of—

(*a*) criticism or review, of that or another performance or recording, or of a work,

(*b*) reporting current events, or

(*c*) education, research or private study, shall not infringe any of the rights conferred by this Part.

(2) Fair dealing with a recording of a performance for the purposes of caricature, parody or pastiche shall not infringe the copyright in that work.

(3) In this Part, "fair dealing" means the making use of a performance or recording which has been lawfully made available to the public for a purpose and to an extent which will not unreasonably prejudice the interests of the rightsowner where such use is accompanied by a sufficient acknowledgement.**]**

Incidental use of performances.

222.—(1) The rights conferred by this Part are not infringed by the inclusion in an incidental manner of a performance or recording in another recording or work.

(2) The rights conferred by this Part are not infringed by the making available to the public of anything whose making was not, by virtue of *subsection (1)*, an infringement of those rights.

(3) A performance or recording shall not be regarded as included in an incidental manner in another recording or work where it is included in a manner where the interests of the rightsowner are unreasonably prejudiced.

Education

Copying of a performance for purpose of instruction, etc.

223.—(1) The rights conferred by this Part are not infringed by the copying of a recording of a performance in the course of F117**[**education or of preparation for education where the copying is done by or on behalf of a person giving or receiving education**]**

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

(*a*) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination, or

(*b*) by anything done for the purposes of an examination by way of communicating the questions to the examination candidates.

(3) Where a copy which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

Playing of sound recording, etc., at an educational establishment.

224.—(1) The playing or showing of a sound recording, film, broadcast or cable programme before an audience limited to persons who are teachers in or pupils in attendance at an educational establishment or other persons directly connected with the activities of that establishment—

(*a*) by a teacher or pupil in the course of the activities of the establishment concerned, or

(*b*) by any person for the purposes of F118**[**education**]**,

is not a playing or showing of a performance or a recording in public for the purposes of infringement of the rights conferred by this Part.

(2) For the purposes of this section, a person is not directly connected with the activities of an educational establishment by reason only that he or she is a parent or a guardian of a pupil in attendance at the educational establishment concerned.

Recording of broadcast, etc., on behalf of an educational establishment.

225.—(1) A recording of a broadcast or a 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 infringing any of the rights conferred by this Part in relation to any performance or recording included in the broadcast or cable programme.

(2) Where a recording which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

F119**[**Text and data mining for non-commercial research

225A.—(1) Subject to *subsection (3)*, the making of a copy of a performance or recording by a person who has lawful access to the performance or recording does not infringe any of the rights conferred by this Part where the copy is—

(*a*) made in order that the person may carry out a computational analysis of anything in the work for the sole purpose of research for a non-commercial purpose, and

(*b*) accompanied by a sufficient acknowledgement.

(2) A copy made under *subsection (1)* of a performance or recording which was, at the time when the copy was made, available without a restriction as to its access does not infringe copyright, and whether or not that work continues to be so available after that time.

(3) Where a copy of a performance or recording has been made under *subsection (1)* by a person, the copyright in the performance or recording is infringed where the copy—

(*a*) is transferred to any other person, except where the transfer is authorised by the copyright owner, or

(*b*) is used for any purpose other than the purpose referred to in *subsection (1)(a)*.

F120**[**(3A) A copy of a work made in compliance with *subsection (1)* shall be stored in a secure manner appropriate to the nature of the work concerned and may be retained for the purposes of research, including for the purposes of the verification of research results.

(3B) In order to ensure that a copy of a work is stored with an appropriate level of security in accordance with *subsection (3A)*, the person responsible for the security and integrity of the networks and databases where the copy is hosted (in this section referred to as "the responsible person") shall ensure that only persons who have lawful access to the data contained in that copy shall be permitted to access those data, including through IP address validation or user authentication.

(3C) Where a copy of a work is made in compliance with *subsection (1)*, the author of the work, in order to satisfy himself or herself of the security and integrity of the networks and databases where the copy is hosted, shall—

(*a*) be informed of the making of the copy,

(*b*) be entitled to request information on the steps taken by the responsible person to comply with *subsection (3B)*, and

(*c*) be entitled, where he or she requests any additional security measures, to a response as soon as practicable as to whether or not those additional security measures will be applied.

(3D) The exceptions and limitations provided for under this section shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

(3E) Where a beneficiary of an exception or limitation under this section has legal access to the relevant protected work or subject matter, the relevant F121**[**rightholder**]** shall ensure that that beneficiary has the means of benefiting from that exception or limitation to the extent necessary to do so.

(3F) Any contractual provisions contrary to this section shall be unenforceable.**]**

(4) Without prejudice to *section 374*, nothing in *Part VII* shall be construed as operating to prevent any person from undertaking an act permitted by this section.

(5) Without prejudice to the generality of *section 52(1)*, where the publication of the results of a computational analysis referred to in *subsection (1)(a)* of a copy of a performance or recording includes the reproduction of extracts from the performance or recording, such inclusion shall constitute inclusion in an incidental

manner referred to in *section 52(1)* if the extracts are not more than are reasonably necessary to explain, or to assist in explaining, the results of the analysis.**]**

F122**[**Text and data mining for non-commercial purposes - exception

225AA.—(1) Where F123**[**"a rightholder**]** has not expressly reserved in an appropriate manner, in accordance with *subsection (3)*, the use of a work for reproduction or extraction for the purposes of text and data mining, a person who has lawful access to it but does not fall within the scope of *section 225A(1)*, may reproduce it for the purposes of text and data mining.

(2) Reproductions and extractions made pursuant to *subsection (1)* may be retained for as long as is necessary for the purposes of text and data mining.

(3) For the purposes of *subsection (1)*, F123**[**a rightholder**]** reserves the use of a work for reproduction or extraction for the purposes of text and data mining in an appropriate manner where the reservation concerned—

(*a*) is machine-readable in the case of content made publicly available online, including metadata and terms and conditions of a website or a service, and

(*b*) in case of content not made publicly available online, is clearly communicated to all persons who have lawful access to it.

(4) The exceptions and limitations provided for under this section shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

(5) Where a beneficiary of an exception or limitation under this section has legal access to the relevant protected work or subject matter, the relevant F123**[**rightholder**]** shall ensure that that beneficiary has the means of benefiting from that exception or limitation to the extent necessary to do so.

(6) Any contractual provisions contrary to this section shall be unenforceable.**]**

F124**[**Illustration for education, teaching or scientific research

225B.—(1) Subject to *subsections (2)* to *(5)*, it is not an infringement of the rights conferred by this Part—

(*a*) to make or to cause to be made a copy or communication of a recording of a performance for the sole purpose of illustration for education, teaching or scientific research or of preparation for education, teaching or scientific research, or

(*b*) without prejudice to the generality of *paragraph (a)*, for an educational establishment, for the educational purposes of that establishment, to copy or cause to be copied a recording of a performance, or to do or to cause to be done any other reasonably necessary act in order to display it.

(2) *Subsection (1)* shall not apply unless the copy or communication is—

(*a*) made for purposes that are neither directly nor indirectly commercial,

(*b*) made only to an extent reasonably justified by the non-commercial purposes referred to in *paragraph (a)*, and

(*c*) accompanied by a sufficient acknowledgement.

(3) *Subsection (1)* shall not apply if—

(*a*) the recording being copied or communicated is an infringement of the rights conferred by this Part, and

(*b*) the person making the copy or communication or causing it to be made did not have reasonable grounds to believe that the recording was not such an infringement.

(4) Where a copy which would otherwise be an illicit recording is made under this section, but is subsequently sold, rented or lent, or offered or exposed for sale,

rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(5) *Subsection (1)* shall not apply if the recording is commercially available in the State—

(*a*) in a medium that is appropriate for any purpose referred to in that subsection,

(*b*) by or with the authority of the owner of the rights in that recording,

(*c*) on commercial terms no less favourable than those that apply to the recording in a medium other than the medium referred to in *paragraph (a)*, and

(*d*) in sufficient supply to meet the likely demand for that recording in the medium referred to in *paragraph (a)*.**]**

F125**[**Distance learning provided by educational establishment

225C.— (1)F126**[**Subject to *subsections (2)*, *(3)* and *(4)***]**, it is not an infringement of the rights conferred by this Part for—

(*a*) an educational establishment, for the educational purposes of that establishment, to communicate a recording of a performance, sound recording, film, broadcast or cable programme as part of a lesson or examination to a student of that establishment by telecommunication, and

(*b*) a student who has received such a lesson or examination to make a copy of such recording, film, broadcast or cable programme in order to be able to listen to or view it at a more convenient time.

(2) *Subsection (1)* shall not apply if—

(*a*) the recording, film, broadcast or cable programme being communicated or copied is an infringement of the rights conferred by this Part, and

(*b*) the person making the communication or copy or causing it to be made did not have reasonable grounds to believe that the recording, film, broadcast or cable programme was not such an infringement.

(3) Where a copy which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.**]**

F127**[**(4) *Subsection (1)* shall apply on condition that such use takes place—

(*a*) under the authority of an educational establishment, on its premises or at other venues, or through a secure electronic environment access to which is limited to an educational establishment's teaching staff and to pupils or students enrolled in a study programme, in particular through appropriate authentication procedures including password-based authentication, and

(*b*) is accompanied by an indication of the source, including the author's name, unless this turns out to be impossible.

(5) The exceptions and limitations provided for under this section shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

(6) Where a beneficiary of an exception or limitation under this section has legal access to the relevant protected work or subject matter, the relevant F128**[**rightholder**]** shall ensure that that beneficiary has the means of benefiting from that exception or limitation to the extent necessary to do so.

(7) Any contractual provisions contrary to this section shall be unenforceable.**]**

F129[Use by educational establishment of recording of performance available through the Internet

225D.—(1) Subject to *subsection (2)*, it is not an infringement of the rights conferred by this Part for an educational establishment, for the educational purposes of that establishment, to copy or communicate a recording of a performance that is available through the Internet if that copy or communication is accompanied by a sufficient acknowledgement.

(2) *Subsection (1)* shall not apply if—

(*a*) the recording is protected by a technological protection measure,

(*b*) the educational establishment knew or ought to have been aware that the recording was made available through the Internet without the consent of the copyright owner, or

(*c*) a clearly visible notice, and not merely the copyright symbol, prohibiting the copying or communication of the recording is posted on the Internet website concerned or on the recording itself.**]**

F130[Performers' rights not infringed by lending by educational establishments.**]**

F130**[226.**—The rights conferred by this Part are not infringed by the lending by an educational establishment of a copy of a recording of a performance.**]**

Libraries and Archives

Regulations relating to copying of recordings by libraries and archives.

227.—(1) The Minister may make regulations for the purposes of this section and those regulations may make different provisions for different classes of libraries or archives and for different purposes.

(2) Without prejudice to the generality of *subsection (1)*, the Minister may prescribe the libraries and archives to which *sections 228* to *234* apply and may prescribe all or any of the following—

(*a*) the conditions that are to be complied with when a librarian or archivist of a prescribed library or prescribed archive makes and supplies a copy of any part of a recording of a performance which has been lawfully made available to the public to a person requiring a copy;

(*b*) the conditions that are to be complied with when a librarian or archivist of a prescribed library or prescribed archive makes and supplies to another prescribed library or prescribed archive a copy of a recording of a performance or part of a recording of a performance which has been lawfully made available to the public and is required by that other prescribed library or archive;

(*c*) the conditions that are to be complied with before a librarian or archivist of a prescribed library or prescribed archive makes a copy of a recording of a performance in the permanent collection of the library or archive in order to preserve or replace that recording in the permanent collection of that prescribed library or prescribed archive, or in the permanent collection of another prescribed library or prescribed archive;

(*d*) the conditions that are to be complied with by a librarian or archivist of a prescribed library or prescribed archive when making or supplying a copy of the whole or part of certain recordings of a performance which have not been lawfully made available to the public from a recording in the prescribed library or prescribed archive to a person requiring the copy.

Libraries and archives: declarations.

228.—(1) Where regulations made by the Minister under *section 227* require a librarian or archivist to be satisfied as to any matter before making or supplying a copy of a recording of a performance—

(*a*) the librarian or archivist concerned may rely on a declaration as to that matter by the person requesting the copy, unless the librarian or archivist is aware that it is false in a material particular, and

(*b*) in such cases as may be prescribed, the librarian or archivist shall not make or supply the copy in the absence of a declaration in such form as may be prescribed.

(2) Where a person requesting a copy of a recording of a performance makes a declaration which is false in a material particular and is supplied with a copy which would have been an illicit recording if made by him or her—

(*a*) he or she shall be liable for infringement of the rights conferred by this Part as if he or she had made the copy, and

(*b*) the copy shall be treated as an illicit recording.

Copying by librarians or archivists: parts of recordings lawfully made available to public.

229.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply a copy of part of a recording of a performance which has been lawfully made available to the public without infringing any rights conferred by this Part.

(2) A copy made under *subsection (1)* shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for the purposes of F131**[**education, research**]** or private study and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of the same recording unless the person satisfies the librarian or archivist that the previous copy has been lost, stolen, discarded or destroyed or a reasonable period of time has elapsed, and that person shall not be furnished with a copy of more than a reasonable proportion of any recording of a performance.

Multiple copying.

230.—(1) A copy of a recording shall not be supplied under *section 229* to more than 3 persons whose requirements are related to any similar requirement of any other person.

(2) For the purposes of *subsection (1)*—

(*a*) the requirements of persons shall be deemed to be similar where the requirements are for copies of substantially the same material at approximately the same time and for substantially the same purpose, and

(*b*) the requirements of persons shall be deemed to be related where those persons receive F132**[**education**]** to which the material is relevant at the same time and place.

Copying by librarians or archivists: supply of copies to other libraries and archives.

231.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply to another prescribed library or prescribed archive a copy of the whole or part of a recording of a performance, which has been lawfully made available to the public, without infringing any rights conferred by this Part.

(2) *Subsection (1)* shall not apply where, at the time the copy is made, the librarian or archivist making it could, by reasonable enquiry, obtain the consent of a person entitled to authorise the making of the copy.

Copying by librarians or archivists: replacement copies of recordings of performances.

232.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make a copy of a recording of a performance in the permanent collection of the library or archive—

(*a*) in order to preserve or replace that recording by placing the copy in the permanent collection of that library or archive in addition to or in place of that recording, or

(*b*) in order to replace in the permanent collection of another prescribed library or prescribed archive a recording which has been lost, destroyed or damaged,

without infringing any right conferred by this Part.

(2) This section shall only apply where it is not reasonably practicable to purchase a copy of the recording concerned for the purposes of *subsection (1)*.

Copying by librarians or archivists for certain purposes.

233.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make a copy of a recording of a performance in the permanent collection of the library or archive—

(*a*) for the purposes of obtaining insurance cover for the copy of a performance concerned;

(*b*) for purposes of security;

(*c*) for the purposes of compiling or preparing an archival record of the performance; or

(*d*) for exhibition in the library or archive,

without infringing any rights conferred by this Part.

(2) F133**[***Subsection (1)* shall apply to copying conducted for the curatorial purposes specified in that subsection**]**, and to an extent reasonably justified by the non-commercial purpose to be achieved.

F134**[**(3) Subject to *subsection (4)*, the librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make a copy of a recording of a performance in the permanent collection of the library or archive for the purposes of—

(*a*) compiling or preparing a catalogue, or

(*b*) publishing an image or clip from the recording in a catalogue relating to an exhibition, without infringing any copyright in that recording.

(4) *Subsection (3)* shall apply to copying—

(*a*) conducted for the curatorial purposes referred to in that subsection,

(*b*) to an extent reasonably justified by the non-commercial purpose to be achieved, and

(*c*) accompanied by a sufficient acknowledgement.**]**

Copying by librarians or archivists: certain recordings not lawfully made available to public.

234.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply a copy of the whole or part of a recording of a performance which has not been lawfully made available to the public from any recording in the permanent collection of the library or archive without infringing any right conferred by this Part.

(2) This section shall not apply where the performer, or the person having recording rights in the relevant performance, has prohibited copying of that recording of the performance and at the time the copy is made the librarian or archivist making the copy knew, or ought to have been aware of, that fact.

(3) A copy made under *subsection (1)* shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for purposes of F135**[**education, research**]** or private study and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of that recording or part of that recording.

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

235.—Where a recording of a performance of cultural or historical importance or interest may not lawfully be exported from the State unless a copy of it is made and deposited in a library, archive or other institution designated by the Minister for Arts, Heritage, Gaeltacht and the Islands under section 50 of the National Cultural Institutions Act, 1997, it shall not be an infringement of any right conferred by this Part to make that copy.

F136[Fair dealing by librarians and archivists

235A.—(1) Without prejudice to the generality of *section 50(1)*, the communication, by a librarian or archivist of a prescribed library or prescribed archive, to members of the public of recordings of performances in the permanent collection of the library or archive, by dedicated terminals on the premises of the library or archive, shall constitute fair dealing with the recording for the purposes of that section where the communication is—

(*a*) undertaken for the sole purpose of education, teaching, research or private study, and

(*b*) accompanied by a sufficient acknowledgement.

(2) Without prejudice to the generality of *section 50(1)* but subject to *subsection (3)*, the brief and limited display of a still image or very short clip from a recording of a performance in the permanent collection of a prescribed library or prescribed archive—

(*a*) either—

(i) in that library or another prescribed library or in that archive or another prescribed archive, or

(ii) by the librarian or archivist of the first-mentioned library or archive, by another person acting under the authority of that librarian or archivist,

and

(*b*) during a public lecture given—

(i) in that library or another prescribed library or in that archive or another prescribed archive,

(ii) by the librarian or archivist of the first-mentioned library or archive or by another person acting under the authority of that librarian or archivist,shall constitute fair dealing for the purposes of *section 50(1)*.

(3) *Subsection (2)* shall not apply unless the communication or display is—

(*a*) undertaken for the sole purpose of education, teaching, research or private study where such purpose is neither directly nor indirectly commercial, and

(*b*) accompanied by a sufficient acknowledgement.

(4) The communication through the Internet or otherwise of the display referred to in *subsection (2)* shall constitute fair dealing for the purposes of *section 50(1)* where the display is—

(*a*) undertaken for the sole purpose of education, teaching, research or private study where such purpose is neither directly nor indirectly commercial, and

(*b*) accompanied by a sufficient acknowledgement.]

Copying by librarians or archivists: illicit recording.

236.—Where a copy which would otherwise be an illicit recording is made under *section 229*, *231*, *232*, *234* or *235* but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

F137[Orphan works

236A.—(1) The rights conferred by this Part in relation to a relevant work in the collection of a relevant body are not infringed by a relevant body where—

(*a*) the relevant work is an orphan work within the meaning of Regulation 4 of the Regulations of 2014, and

(*b*) in accordance with Regulation 8 of the Regulations of 2014, the relevant body—

(i) makes that orphan work available to the public, or

(ii) carries out acts of reproduction of that orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(2) The rights conferred by this Part in relation to a relevant work in the collection of a relevant body are not infringed by a relevant body where—

(*a*) the relevant work is a work to which Regulation 4(2) of the Regulations of 2014 applies,

(*b*) the relevant body has, pursuant to Regulation 4(3) of those Regulations, been given an authorisation referred to in that Regulation, and

(*c*) in accordance with Regulation 9 the Regulations of 2014, the relevant body—

(i) makes that orphan work available to the public, or

(ii) carries out acts of reproduction of that orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(3) In this section—

"Regulations of 2014" has the meaning assigned to it by *section 70A*;

"relevant body" has the meaning assigned to it by *section 70A*;

"relevant work" has the meaning assigned to it by *section 70A*.**]**

Public Administration

Parliamentary and judicial proceedings.

237.—The rights conferred by this Part are not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting those proceedings.

Statutory inquiries.

238.—(1) The rights conferred by this Part are not infringed by anything done for the purposes of a statutory inquiry or for the purpose of reporting any such inquiry.

(2) The rights conferred by this Part are not infringed by the making available to the public of copies of a report of a statutory inquiry containing a recording of a performance.

Copying of material in public records.

239.—Any material which is comprised in records which are open to public inspection may be copied, and a copy may be supplied to any person, without infringing any right conferred by this Part.

Material open to public inspection or on statutory register.

240.—(1) Without prejudice to the generality of *section 239*, where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, the rights conferred by this Part are not infringed by the copying, for a purpose which does not involve the making available to the public of copies, of so much of the material as contains factual information of any description, by or with the authority of the person required to make the material open to public inspection or, by or on the authority of the person maintaining the register.

(2) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, the rights conferred by this Part are not infringed by the copying or making available to the public of copies of that material, for the purpose of enabling the material to be inspected at another time or place, or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed, by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register.

(3) Where a recording of a performance is made available to the public under this section the person granting access to the material shall ensure that it bears a mark clearly indicating that it is provided for the purpose of inspection and that

no other use of the material may be made without the consent of the person entitled to authorise such use.

(4) Material may not be provided under this section unless the person granting access to the material has first obtained from the person requesting the material a declaration, in such form as may be prescribed, indicating that the material is required for the sole purpose of enabling the material to be inspected at another time or place or to otherwise facilitate the exercise of the right of public inspection.

(5) Where material which is open to public inspection pursuant to a statutory requirement, or is on a statutory register, contains information about matters of general, scientific, technical, commercial or economic interest, the rights conferred by this Part are not infringed by the copying or making available to the public of copies of that material for the purpose of disseminating that information, by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register.

(6) The Minister may prescribe the conditions which are to be complied with before material is made available to the public under this section.

(7) The Minister may by order provide that *subsections (1)* to *(5)* apply—

(*a*) to material made open to public inspection by—

(i) an international organisation specified in the order, or

(ii) a person specified in the order who has functions in the State under an international agreement to which the State 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 on a statutory register.

Acts done under statutory authority.

241.—(1) Where the undertaking of a particular act is specifically authorised by an enactment then, unless the enactment provides otherwise, the undertaking of that act shall not infringe any right conferred by this Part.

(2) Nothing in this section shall be construed as excluding any defence available under any enactment.

Recordings in Electronic Form

Transfer of copies of recordings in electronic form.

242.—(1) This section applies where a recording of a performance in electronic form has been purchased on terms which expressly or impliedly allow the purchaser to make further recordings in connection with his or her use of the recording.

(2) Where there are no express terms—

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

(*b*) specifying the conditions on which a transferee may undertake the acts which the purchaser was permitted to undertake,

then, any acts which the purchaser was permitted to undertake may also be undertaken by a transferee without infringement of any right conferred by this Part, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(3) *Subsection (2)* applies where the original purchased recording is no longer usable and that which is transferred is a further recording used in its place.

(4) This section shall apply on a second and subsequent transfer in like manner as to the first transfer to a purchaser and references to the purchaser shall be construed as references to a second or subsequent transferee.

(5) This section shall not apply in relation to a recording purchased before the commencement of this Part.

Miscellaneous Matters Relating to Performers' Rights

Use of recordings of spoken words in certain cases.

243.—(1) Subject to compliance with the conditions specified in *subsection (2),* where a recording of the reading or recitation of a literary or a dramatic work is made for the purpose of—

(*a*) reporting current events, or

(*b*) broadcasting or including in a cable programme service the whole or part of the reading or recitation,

it is not an infringement of any right conferred by this Part to use the recording or to make further copies and use those copies for the purposes referred to in *paragraphs (a)* and *(b)*.

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

(*a*) that the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme,

(*b*) that the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation,

(*c*) that the use made of the recording is not prohibited by or on behalf of the person giving the reading or recitation before the recording was made, and

(*d*) that the use made of the recording is by or with the authority of a person who is lawfully in possession of the recording.

F138**[**Temporary acts of reproduction.

244.—(1) It is not an infringement of the rights conferred by this Part to undertake or conduct temporary acts of reproduction which acts are transient or incidental and which are an integral and essential part of a technological process and whose sole purpose is to enable—

(*a*) a transmission in a network between third parties by an intermediary, or

(*b*) a lawful use,

of the subject-matter to be made, and which acts have no independent economic significance.

(2) Where a copy, which would otherwise be an illicit recording, is made under this section and is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.**]**

Recordings of works of folklore.

245.—(1) A recording of a performance of an anonymous work which has not been lawfully made available to the public may be made for the purpose of including it in an archive maintained by a designated body without infringing any right conferred by this Part where at the time the recording is made—

(*a*) the making of the recording does not infringe any copyright, and

(*b*) the making of the recording is not prohibited by any performer.

(2) A copy of a recording made under *subsection (1)* and included in an archive maintained by a designated body may, subject to compliance with the conditions referred to in *subsection (3),* be made and supplied by an archivist without infringing any right conferred by this Part.

(3) The conditions referred to in *subsection (2)* relating to the actions of archivists are—

(*a*) that a copy may not be supplied other than to a person who satisfies the archivist that he or she requires that copy for the purposes of F139**[**education, research**]** or private study and he or she shall not use it for any other purpose, and

(*b*) that a person shall not be furnished with more than one copy of the same recording.

(4) In this section "designated body" means a body designated for the purposes of *section 92*.

Playing or showing sound recordings, broadcasts and cable programmes in certain premises.

246.—(1) Subject to *subsection (2)*, it is not an infringement of any of the rights conferred by this Part to cause a sound recording, broadcast or cable programme to be heard or viewed where it is heard or viewed—

(*a*) in part of the premises where sleeping accommodation is provided for the residents or inmates, and

(*b*) as part of the amenities provided exclusively or mainly for residents or inmates.

(2) *Subsection (1)* does not apply in respect of any part of premises to which *subsection (1)* applies where there is a discrete charge made for admission to the part of the premises where a sound recording, broadcast or cable programme is to be heard or viewed.

Playing of sound recordings for clubs, societies, etc.

247.—(1) Subject to compliance with the conditions specified in *subsection (2)*, it is not an infringement of any right conferred by this Part to play a sound recording as part of the private activities of or for the benefit of a club, society or other organisation.

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

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

(*b*) the proceeds of any charge for admission to the place where the sound recording is to be heard are applied solely for the purposes of the club, society or other organisation.

(3) *Subsection (1)* shall not apply in the case of any club, society or other organisation where a charge is made for admission to the place where the sound recording is to be heard and any of the proceeds of the charge are applied otherwise than for the purpose of the club, society or other organisation.

Recording for purposes of broadcast or cable programme.

248.—(1) Where, by virtue of a licence or assignment of a right conferred by this Part, a person is authorised to broadcast or include in a cable programme service a recording of a performance, he or she shall be deemed to be licensed by the owner of the right in the recording to copy or authorise the copying of that recording by means of his or her facilities for the purposes of his or her broadcast or cable programme.

(2) A licence conferred by *subsection (1)* shall be subject to the condition that any copy resulting from the exercise of that licence shall not be used for any purpose other than the broadcast or cable programme and shall be destroyed within 3 months of first being used for broadcasting or included in a cable programme service.

(3) A copy of a recording made under this section shall be treated as an illicit recording where it is used for purposes other than broadcasting or inclusion in a cable programme service or where it is used after the expiration of 3 months from the date it is first used for broadcasting or included in a cable programme service.

Recording for purposes of supervision and control of broadcasts and cable programmes.

249.—(1) The rights conferred by this Part are not infringed by the making or use by an authorised broadcaster or authorised cable programme service provider, for the purpose of maintaining supervision and control over programmes broadcast by them or included by them in a cable programme service, of recordings of those programmes.

(2) The rights conferred by this Part are not infringed by any use made by any body established by the State to regulate the operations of broadcasters or cable programme service provides of any recordings of broadcasts or cable programmes.

Recording for purposes of time-shifting.

250.—(1) The making for private and domestic use of a fixation of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at another time or place shall not infringe any right conferred by this Part.

(2) Subject to *subsection (3)*, the making by an establishment for private and domestic use of a fixation of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at another time or place shall not infringe any right conferred by this Part.

(3) The Minister may specify by order establishments for the purposes of this section.

Reception and retransmission of broadcast in cable programme service.

251.—F140**[**...**]**

Provision of modified recordings.

252.—(1) A designated body may—

(*a*) make a copy of a recording, for the purpose of modifying that copy to meet the special needs of a person who has a physical or mental disability, and

(*b*) supply that modified copy to that person without infringing any right conferred by this Part.

(2) Where a copy which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(3) In this section "designated body" means a body designated for the purposes of *section 104*.

Recording for archival purposes.

253.—(1) A recording of a broadcast or a cable programme of a designated class or a copy of such a recording may be made for the purpose of including it in an archive maintained by a designated body without infringing any right conferred by this Part in relation to a performance or recording included in the broadcast or cable programme.

(2) In this section—

"designated body" means a body designated for the purposes of *section 105;*

"designated class" means a class designated for the purposes of *section 105*.

Power of Controller to consent on behalf of performer.

254.—(1) Subject to the service or publication of such notices as may be required by rules made under *section 363* or as the Controller may in any particular case direct, the Controller may by order, on the application of a person wishing to make a copy of a recording of a performance, consent to the making of the copy in a case where the identity or location of the person entitled to the reproduction right cannot be ascertained by reasonable enquiry.

(2) The consent given by the Controller under *subsection (1)* has effect in the same manner as the consent of the person entitled to the reproduction right for

the purposes of *section 204* and may be given subject to any conditions specified in the order made under *subsection (1)*.

(3) For the purposes of giving consent under *subsection (1)*, the Controller shall take into account—

(*a*) whether the original recording was made with the consent of the performer and is lawfully in the possession, custody or control of the person proposing to make the copy, and

(*b*) whether the making of the copy is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original recording was made.

(4) *subsection (3)* shall not affect the obligation of the Controller in any case to have regard to all relevant circumstances.

(5) Where the Controller consents under *subsection (1)* he or she shall, in default of agreement between the applicant and the person entitled to the reproduction right, make such order as the Controller thinks fit as to the payment to be made to the person entitled to the reproduction right in consideration of consent being given.

F141**[**(6) This section shall not apply to a recording of a performance that is a relevant work within the meaning of the Regulations of 2014 and the relevant work is an orphan work within the meaning of those Regulations.

(7) In *subsection (6)*—

"Regulations of 2014" has the meaning assigned to it by *section 70A*;

"relevant work" has the meaning assigned to it by *section 70A*.**]**

CHAPTER 5

Delivery Up and Seizure

Order for delivery up.

255.—(1) Where a person—

(*a*) in the course of a business, trade or profession, has in his or her possession, custody or control an illicit recording of a performance,

(*b*) has in his or her possession, custody or control an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings, or

(*c*) has in his or her possession, custody or control a protection-defeating device,

a person having rights conferred by this Part in relation to the performance may apply to the appropriate court for an order that the illicit recording, article or device be delivered up to him or her or to such other person as the court may direct.

(2) An application under *subsection (1)* shall not be made after the expiration of the period specified in *section 263(1)* as being the limit of the period for delivery up 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 as to the disposal of the illicit recording, article or device.

(3) A person to whom an illicit recording, article or device is delivered up pursuant to an order made under this section shall, where an order under *section 264* as to the disposal of the illicit recording, article or device is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

Application to District Court for seizure of illicit recordings, articles or devices, etc.

256.—(1) Without prejudice to *section 257* where the owner of the rights in a recording of a performance conferred by this Part applies to the District Court, it may, where satisfied that there are reasonable grounds for believing that there are being hawked, carried about or marketed—

(*a*) illicit recordings of the performance,

(*b*) articles specifically designed or adapted for making recordings of a performance, which the person hawking, carrying about or marketing those articles, knows or has reason to believe that they have been or are to be used to make illicit recordings of a performance, or

(*c*) protection-defeating devices,

authorise by order a member of the Garda Síochána to seize without warrant the recordings, articles or devices and to bring them before the District Court.

(2) On being satisfied that a recording, article or device referred to in *subsection (1)* is—

(*a*) an illicit recording,

(*b*) an article that has been or is to be used to make illicit recordings, or

(*c*) a protection-defeating device,

the District Court may order the recording, article or device to be destroyed or to be delivered up to the rightsowner or otherwise dealt with as the Court may think fit.

(3) In an application to the District Court under *subsection (1)* or, in any *ex parte* application or interlocutory motion to a court of competent jurisdiction for an order which would permit the applicant to enter and search premises or place specified therein and take possession of material found therein on terms set out in such order, the court hearing such an application may receive hearsay evidence to the effect that the witness or deponent believes that the material may be found in a particular location.

(4) A witness or deponent shall not be obliged to indicate the source of the information upon which that witness formed the belief that material may be found in a particular location.

(5) After the implementation of an order made under this section, the court may, on the application of a person aggrieved by it, award damages against the applicant for the order as it considers just, on being satisfied that—

(*a*) no infringement of a right conferred by this Part has been established, and

(*b*) the information on which the rightsowner applied for the order was given maliciously.

Right of rightsowner to seize illicit recordings, articles or devices, etc.

257.—(1) Where it would be impracticable for the owner of the rights in a recording of a performance to apply to the District Court for an order under *section 256*, a recording, article or device referred to in *section 256(1)*, in respect of which the rightsowner would be entitled to apply for an order for delivery up under *section 255*, may be seized and detained by the rightsowner or a designated representative of that owner where the recording, article or device is found being hawked, carried about or marketed.

(2) The right to seize and detain conferred by *subsection (1)* is exercisable subject to *subsections (4)* to *(8)* and is subject to any decision of the court relating to disposal of illicit recordings, articles or devices under *section 264*.

(3) A person who seizes any illicit recordings, articles or devices under this section shall apply to the District Court for an order to dispose of those recordings, articles or devices within 30 days of the seizure.

(4) Before any illicit recordings, articles or devices are seized under this section notice of the time and place of the proposed seizure shall be given to a member

of the Garda Síochána in the District Court Area in which the recordings, articles or devices are to be seized.

(5) A person exercising the right to seize and detain conferred by *subsection (1)* may enter premises to which members of the public have access.

(6) A person exercising the right to seize and detain conferred by *subsection (1)* may not seize anything in the possession, custody or control of a person at his or her permanent or regular place of business, trade or profession, and may not use any force.

(7) Without prejudice to the generality of *subsection (6)* a person exercising the right to seize and detain conferred by *subsection (1)* may make an inventory or prepare other evidence of infringement of any of the rights conferred by this Part or potential infringement of such rights.

(8) At the time when any illicit recordings, articles or devices are seized under this section there shall be given to the owner, occupier or person in charge of the place where the recordings, articles or devices are seized a notice, in the prescribed form, informing the person of the right of the owner of the recordings, articles or devices being seized to apply to the District Court for the return of the recordings, articles or devices on the grounds that they are not—

(*a*) illicit recordings of a performance,

(*b*) articles that have been or are to be used to make illicit recordings, or

(*c*) protection-defeating devices.

(9) Without prejudice to the generality of *subsection (8)*, the Minister shall prescribe the form of the notice to be given under that subsection and the form shall specify—

(*a*) the name and the address of the person claiming to be the owner of the rights in the recording concerned,

(*b*) the statutory authority for the seizure,

(*c*) the grounds that the person seizing the recordings, articles or devices has for such seizure, and

(*d*) a list of that which is seized.

(10) The owner of any recordings, articles or devices seized under this section may apply to the District Court for the return of those recordings, articles or devices.

(11) Rules of court shall be made under this section and the rules shall provide for procedures to enable applications to be made and dealt with in an expeditious manner.

(12) Where there has been an exercise of the right to seize and detain, conferred by *subsection (1)*, the court may, on the application of a person aggrieved by it, award damages against a person who exercises that right as it considers just, on being satisfied that—

(*a*) no infringement of a right conferred by this Part has been established, and

(*b*) the person had no reasonable grounds for such seizure.

CHAPTER 6

Offences: Performances

Offences.

258.—(1) A person who, without the consent of the rightsowner—

(*a*) makes for sale, rental or loan,

(*b*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*c*) imports into the State, otherwise than for his or her private and domestic use,

(*d*) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or

(*e*) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the rightsowner,

a recording which is, and which he or she knows or has reason to believe is, an illicit recording, shall be guilty of an offence.

(2) A person who—

(*a*) makes,

(*b*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*c*) imports into the State, or

(*d*) has in his or her possession, custody or control,

an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings, shall be guilty of an offence.

(3) A person who—

(*a*) (i) makes,

(ii) sells, rents or lends, or offers or exposes for sale, rental or loan,

(iii) imports into the State, or

(iv) has in his or her possession, custody or control,

a protection-defeating device, knowing or having reason to believe that it has been or is to be used to circumvent rights protection measures, or

(*b*) provides information, or offers or performs any service intended to enable or assist persons to circumvent rights protection measures,

shall be guilty of an offence.

(4) Where the rights conferred by this Part are infringed—

(*a*) by the playing or showing in public of a recording of a performance, or

(*b*) by the broadcasting or inclusion in a cable programme service of a performance or a recording of a performance,

the person who caused the recording of the performance to be shown or played, or the performance or the recording of the performance to be broadcast or included in a cable programme service, shall be guilty of an offence where he or she knew or had reason to believe that the rights conferred by this Part would be infringed.

(5) An offence shall not be committed under *subsection (1)* or (*4*) by the undertaking of an act which under this Part may be undertaken without infringing the rights conferred by this Part.

(6) A person guilty of an offence under *subsection (1), (2)* or (*3*) shall be liable—

(*a*) on summary conviction, to a F142**[**class C fine**]** in respect of each illicit recording, article or device, or to imprisonment for a term not exceeding 12 months, or both, or

(*b*) on conviction on indictment, to a fine not exceeding F142**[**€130,000**]**, or to imprisonment for a term not exceeding 5 years, or both.

(7) A person guilty of an offence under *subsection (4)* shall be liable—

(*a*) on summary conviction, to a F142**[**class C fine**]** in respect of each offence, or to imprisonment for a term not exceeding 12 months, or both, or

(*b*) on conviction on indictment, to a fine not exceeding F142**[**€130,000**]**, or to imprisonment for a term not exceeding 5 years, or both.

False claims of rights in performances.

259.—A person who, for financial gain, makes a claim to enjoy a right under this Part or *Part IV* which is, and which he or she knows or has reason to believe is, false, shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding F143**[**€130,000**]**, or to imprisonment for a term not exceeding 5 years, or both.

Order for delivery up in criminal proceedings.

260.—(1) The court may, on conviction of a person or being satisfied that there is a *prima facie* case to answer, where the court is satisfied that at the time of the arrest or charge the person had in his or her possession, custody or control—

(*a*) in the course of a business, trade or profession, a recording of a performance, knowing or having reason to believe it to be an illicit recording,

(*b*) an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it had been or was to be used to make illict recordings, or

(*c*) a protection-defeating device,

order that the illicit recording, article or device be delivered up to the rightsowner or to such other person as the court may direct.

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

(*a*) after the expiration of the period specified in *section 263(3)* as being the limit of the period for delivery up, or

(*b*) where it appears to the court unlikely that any order will be made as to the disposal of the illicit recordings, articles or devices.

(3) A person to whom an illicit recording, article or device is delivered up pursuant to an order made under this section shall retain it pending the making of a final order or decision not to make an order, as the case may be.

Search warrants and seizure.

261.—(1) Where a Judge of the District Court is satisfied by information on oath that there are reasonable grounds for suspecting—

(*a*) that an offence under *section 258* has been, or is about to be, committed in, on or at any premises or place, and

(*b*) that evidence that such an offence has been, or is about to be, committed is in, on or at those premises or that place,

the court may issue a warrant authorising a member of the Garda Síochána, accompanied by such other members of the Garda Síochána or other person or persons as that member thinks proper, at any time or times within 28 days from the date of the issue of the warrant, on production, where requested, of that warrant, to enter and search the premises or place specified in the warrant using reasonable force where necessary, and to do all or any of the following acts—

(i) to seize any copies of any recordings, articles or devices in respect of which he or she has reasonable grounds for suspecting that an offence under *section 258* has been or is about to be committed;

(ii) to make an inventory or prepare other evidence of infringement or potential infringement of any right conferred by this Part;

(iii) to seize anything found there which he or she believes on reasonable grounds may be required to be used in evidence in any proceedings brought in respect of an offence under this Act;

(iv) to require any person found there to give his or her name and address.

(2) A warrant issued under this section may authorise persons, including the rightsowner or designated representative thereof, to accompany and assist any member of the Garda Síochána in executing the warrant or in collating any inventory or other evidence.

(3) A person who—

(*a*) obstructs or interferes with a person acting under the authority of a warrant issued under this section,

(*b*) is found in, on or at the premises or place specified in the warrant by a member of the Garda Síochána acting as aforesaid and who fails or refuses to give the member his or her name and address when required to do so or gives a name or address that is false or misleading,

(*c*) obstructs the exercise of an authority conferred by a warrant under this section, or

(*d*) fails or refuses to give information to a member of the Garda Síochána when required to do so under this section,

shall be guilty of an offence and shall be liable on summary conviction to a F144**[**class C fine**]**, or to imprisonment for a term not exceeding 12 months, or both.

False representation of authority to give consent.

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

(2) A person guilty of an offence under this section is liable on summary conviction to a F145**[**class C fine**]**, or to imprisonment for a term not exceeding 12 months, or both.

Period after which remedy of delivery up is not available.

263.—(1) Subject to *subsection (2),* an application for an order under *section 255* may not be made after the expiration of 6 years from the date on which the illicit recording, article or device was made.

(2) Where, during the whole or any part of the period referred to in *subsection (1)*, a person entitled to apply for an order for delivery up—

(*a*) is under a disability, or

(*b*) is prevented by fraud or concealment from discovering the facts entitling him or her to apply for an order,

an application under *section 255* may be made at any time before the expiration of 6 years from the date on which the applicant ceased to be under a disability, or, as the case may be, could, with reasonable diligence, have discovered those facts.

(3) An order for delivery up in criminal proceedings under *section 260* shall not, in any case, be made after the expiration of 6 years from the date on which the proceedings under *section 260* were initiated.

(4) Where in any proceedings for an order for delivery up under *section 255* or *260* the date of the making of the illicit recording, article or device is put into question by the defendant, the onus of proof shall be on the defendant that the illicit recording, article or device was made more than 6 years before the date on

which an application for an order under *section 255* was made or proceedings under *section 260* were initiated.

Order as to disposal of illicit recording, article or device.

264.—(1) An application may be made to the appropriate court for an order that an illicit recording, article or device—

(*a*) delivered up under *section 255* or *260*, or

(*b*) seized and detained under *section 256* or *261*,

shall be—

(i) forfeited to the rightsowner, or

(ii) destroyed or otherwise dealt with as the court may direct,

and the court may make such an order or such other order as it thinks fit.

(2) In considering what order, if any, should be made under *subsection (1)* the court shall consider whether other remedies available in an action for infringement of the rights conferred by this Part would be adequate to compensate the person entitled to those rights and to protect his or her interests.

(3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the recordings, articles or devices concerned, and any such person may—

(*a*) appear in proceedings for an order under this section whether or not he or she was served with notice, or

(*b*) appeal against any order made, whether or not he or she appeared in the proceedings concerned.

(4) An order made under this section shall not take effect until the expiration of the period within which notice of an appeal may be given or, where before the expiration of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(5) Where there is more than one person interested in a recording, article or device, the court shall make such order as it thinks fit and may direct the recording, article or device to be sold or otherwise dealt with and any proceeds divided in accordance with the direction of the court.

(6) Where the court decides that no order shall be made under this section, the person who had the recording, article or device in his or her possession, custody or control immediately before it was delivered up or seized shall be entitled to its return.

(7) References in this section to a person having an interest in a recording, article or device include any person in whose favour an order may be made under this section in respect of the recording, article or device or under *section 145* or under section 23 of the Trade Marks Act, 1996.

CHAPTER 7

Licensing Schemes: Performers' Property Rights Licensing

Licensing schemes and licensing bodies.

265.—(1) In this Part—

"licences" means licences to undertake or authorise the undertaking of any of the acts restricted by a performer's property rights;

"licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, either as owner or prospective owner of a performer's property rights, or as exclusive licensee or as agent for him or her, of performers' property rights licences, and whose objects

include the granting of licences relating to the performances of more than one performer;

"licensing scheme" means a scheme specifying—

(*a*) the classes of case in which the operator of the scheme, or the person on whose behalf that operator acts, is willing to grant performers' property rights licences, and

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

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

(2) References in this Part to licences or licensing schemes relating to the performances of more than one performer shall not include licences or schemes relating to—

(*a*) performances recorded in a single recording, or

(*b*) performances recorded in more than one recording where—

(i) the performers giving the performances are the same, or

(ii) the recordings are made by, or by employees of or commissioned by, a single individual, firm, company or group of companies, including holding companies and their subsidiaries.

References and Applications Relating to Licensing Schemes

General references.

266.—*Sections 267* to *272* apply to licensing schemes which are operated by licensing bodies in relation to the performer's property rights of more than one performer, in so far as they relate to licences for any of the acts restricted by a performer's property rights under *section 204* and *205*.

Reference of proposed licensing scheme to Controller.

267.—(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Controller by an organisation which claims to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply.

(2) The Controller shall not consider a reference by an organisation under *subsection (1)* unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) The Controller may refuse to consider a reference under *subsection (1)* on the ground that the reference is premature.

(4) Where the Controller decides to consider a reference under *subsection (1)* he or she shall consider the subject matter of the reference and make an order, either confirming or varying the proposed scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Reference of licensing scheme to Controller.

268.—(1) Where a licensing scheme is in operation and a dispute arises with respect to the scheme between the operator of the scheme and—

(*a*) a person claiming that he or she 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 operator, person or organisation may refer the scheme to the Controller in so far as it relates to cases of that description.

(2) The Controller shall not consider a reference by an organisation under *subsection (1)* unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) A scheme which has been referred to the Controller under *subsection (1)* shall remain in operation until proceedings in relation to the reference are concluded.

(4) The Controller shall consider the matter referred to him or her and shall make an order, confirming or varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Further reference of scheme to Controller.

269.—(1) Where the Controller has, in respect of a licensing scheme under *section 267* or *268* or under this section, made an order in respect of a scheme, and the order remains in force, the persons to whom this section applies may refer the scheme to the Controller in so far as it relates to cases of that description.

(2) This section applies to—

(*a*) the operator of the scheme,

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

(*c*) an organisation claiming to be representative of persons referred to in *paragraph (b)*.

(3) Where an order under *section 267* or *268* or this section is in force the licensing scheme in respect of which the order is made shall not, except with the special leave of the Controller, be referred to the Controller in respect of the same description of cases—

(*a*) within 12 months from the date of the order in respect of the previous reference, or

(*b*) where the order was made so as to be in force for 15 months or less, until the last 3 months before the expiration of the order.

(4) A scheme which has been referred to the Controller under *subsection (1)* shall remain in operation until proceedings in relation to the reference are concluded.

(5) The Controller shall consider the matter referred to him or her and shall make an order, confirming, varying or further varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(6) An order under *subsection (5)* may be made for such period as the Controller may determine.

Application for grant of a licence in connection with licensing scheme.

270.—(1) A person who claims, in a case to which a licensing scheme relates, that the operator of the scheme has refused to grant or to procure the grant to him or her of a licence in accordance with the scheme, or has failed to do so within a reasonable period, may apply to the Controller for an order under *subsection (4)*.

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

(*a*) has refused to grant or to procure the grant to him or her of a licence, or has failed to do so within a reasonable period and that in the circumstances it is unreasonable that a licence should not be granted, or

(*b*) proposes terms for a licence that are unreasonable,

may apply to the Controller for an order under *subsection (4)*.

(3) A case shall be regarded as being excluded from a licensing scheme for the purposes of *subsection (2)* where—

(*a*) the scheme provides for the grant of licences, subject to terms excepting matters from the licence and the case is 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) Where the Controller is satisfied that a claim under this section is well-founded, he or she 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 Controller may determine to be applicable in accordance with the scheme, or, as the case may be, to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Review of orders made by Controller.

271.—(1) Where the Controller has made an order under *section 270* 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 Controller for a review of that order.

(2) An application under *subsection (1)* shall not be made except with the special leave of the Controller—

(*a*) within 12 months from the date of the order or of the decision on a previous application under this section, or

(*b*) where—

(i) the order was made so as to be in force for 15 months or less, or

(ii) as a result of the decision on a previous application under this section the order is due to expire within 15 months of that decision,

until the last 3 months before the expiration date.

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

Effect of order of Controller as to licensing scheme.

272.—(1) A licensing scheme which has been confirmed or varied by the Controller under *section 267, 268* or *269* shall be in operation or, as the case may be, remain in operation, in so far as it relates to the description of case in respect of which the order was made, for such period as the order remains in force.

(2) Where an order made by the Controller under *section 267, 268* or *269* confirming or varying a licensing scheme is in force (in this section referred to as "an order to which this section applies"), 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 applying to the case concerned or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and

(*b*) complies with the other terms applicable to the licence under the scheme,

is in the same position as regards infringement of a performer's property rights as if he or she had at all material times been the holder of a licence granted by the rightsowner concerned in accordance with the scheme.

(3) The Controller may direct that an order to which this section applies, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference was made, or where later, the date on which the scheme came into operation.

(4) Where a direction is made under *subsection (3)*—

(*a*) any necessary repayments or further payments shall be made in respect of charges already paid, and

(*b*) the reference in *subsection (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.

(5) Where the Controller has made an order under *section 270* and the order remains in force, the person in whose favour the order is made, where he or she—

(*a*) pays to the operator of the scheme any charges payable in accordance with the order or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and

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

is in the same position as regards infringement of a performer's property rights as if he or she had at all material times been the holder of a licence granted by the rightsowner concerned on the terms specified in the order.

References and Applications Relating to Licensing by Licensing Bodies

General references by licensing bodies.

273.—*Sections 274* to *277* apply to licences in relation to the performer's property rights of more than one performer, granted by a licensing body otherwise than pursuant to a licensing scheme, in so far as the licences relate to any of the acts restricted by a performer's property rights under *sections 204* and *205*.

Reference to Controller of proposed licence.

274.—(1) The terms on which a licensing body proposes to grant a licence may be referred to the Controller by the prospective licensee for an order under *subsection (3)*.

(2) The Controller may refuse to consider a reference under *subsection (1)* on the ground that the reference is premature.

(3) Where the Controller decides to consider a reference under *subsection (1)*, he or she shall consider the terms of the proposed licence and make an order, confirming or varying the terms, as the Controller may determine to be reasonable in the circumstances.

(4) An order under *subsection (3)* may be made for such period as the Controller may determine.

Reference to Controller of expiring licence.

275.—(1) A licensee under a licence which is due to expire with the passage of time or as a result of notice given by the licensing body may apply to the Controller on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) An application under *subsection (1)* may be made at any time during the last 3 months before the expiration of the licence.

(3) A licence in respect of which a reference has been made to the Controller under *subsection (1)* shall remain in force until proceedings in relation to the reference are concluded.

(4) Where the Controller is satisfied that an application made under *subsection (1)* is well-founded, he or she shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Controller may determine to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Application for review of order made by Controller.

276.—(1) Where the Controller has made an order under *section 274* or *275*, the licensing body or the person entitled to the benefit of the order may apply to the Controller for a review of that order.

(2) An application under *subsection (1)* shall not be made except with the special leave of the Controller—

(*a*) within 12 months from the date of the order or of the decision on a previous application under this section, or

(*b*) where—

(i) the order was made so as to be in force for 15 months or less, or

(ii) as a result of the decision on a previous application under this section the order is due to expire within 15 months of that decision,

until the last 3 months before the expiration date.

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

Effect of order of Controller as to licence.

277.—(1) Where the Controller has made an order under *section 274* or *275*, and the order remains in force, the person entitled to the benefit of the order, where he or she—

(*a*) pays to the licensing body any charges payable in accordance with the order or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and

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

is in the same position as regards infringement of a performer's property rights as if he or she had at all material times been the holder of a licence granted by the rightsowner concerned on the terms specified in the order.

(2) The benefit of an order made under *section 274* or *275* may be assigned—

(*a*) in the case of an order made under *section 274*, where assignment is not prohibited under the terms of the order of the Controller, and

(*b*) in the case of an order made under *section 275*, where assignment was not prohibited under the terms of the original licence.

(3) The Controller may direct that an order made under *section 274* or *275* or an order made under *section 276* varying such an order, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference or application was made or, where later, the date on which the licence was granted or, as the case may be, was due to expire.

(4) Where a direction is given under *subsection (3)*—

(*a*) any necessary repayments or further payments shall be made in respect of charges already paid, and

(*b*) the reference in *subsection (1) (a)* to the charges payable in accordance with the order shall be construed, where the order is varied by a further order, as a reference to the charges so payable by virtue of that further order.

Licensing: Miscellaneous

General considerations: unreasonable discrimination.

278.—(1) In determining what is reasonable, on a reference or application under this Chapter relating to a licensing scheme or licence, the Controller 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 his or her powers so as to ensure 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.

(2) *Subsection (1)* shall not affect the obligation of the Controller in any case to have regard to all relevant circumstances.

Licences to reflect payments in respect of underlying rights.

279.—Where a reference or application is made under this Chapter in relation to licensing in respect of the performer's property rights in a recording, the Controller shall take into account, in considering what charges are to be paid for a licence, any payments which the owner of the performer's property right is liable to make pursuant to the granting of the licence, or pursuant to the acts authorised by the licence—

(*a*) to owners of the copyright in works included in the recording, or

(*b*) in respect of any performance included in the recording.

CHAPTER 8

Registration of Licensing Bodies in Respect of Performers' Property Rights

Register of licensing bodies for performers' property rights.

280.—(1) The Controller shall establish and maintain a register of licensing bodies in respect of performers' property rights in such form and manner and containing such particulars as the Minister may prescribe to be known as the "Register of Licensing Bodies for Performers' Property Rights" and referred to in this Part as the "Register".

(2) The Controller shall keep the Register in such form that the Register is capable of being used to make a copy of any entry in the Register.

(3) The Register shall be kept at such place as may be prescribed by the Minister and, subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance—

(*a*) the Register shall be made available for inspection by a person at such times and in such manner as may be prescribed by the Minister, and

(*b*) where a request is made to the Controller for a certified or uncertified copy of, or extract from, an entry in the Register, the Controller shall issue a copy of the entry or extract to the applicant.

(4) An application for registration or renewal of a registration of a licensing body shall be made to the Controller in such form and manner as may be prescribed by the Minister and shall be subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance.

(5) The Controller shall register an applicant or renew a registration where the Controller is satisfied that—

(*a*) the applicant complies with the definition of a licensing body specified in *section 265*, and

(*b*) the applicant has provided such information and satisfied such conditions as may be prescribed by the Minister for the purposes of registration.

(6) The information to be prescribed by the Minister under *subsection (5)(b)* shall include the following:

(*a*) the name of the applicant;

(*b*) the address of the applicant;

(*c*) the names of the chairperson and other members of the board or officers, or names of partners, as the case may be, of the applicant;

(*d*) a copy of the memorandum and articles of association or partnership agreement, of the applicant;

(*e*) details of the scheme;

(*f*) details of the scales of charges or proposed charges to be levied by the applicant; F146**[**...**]**

(*g*) the class of rightsowners represented or proposed to be represented by F147**[**the applicant;**]**

F148**[**(*h*) in the case of a licensing body in relation to which any provisions of the European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016 (referred to in this section as "Regulations of 2016") apply, a statement of compliance and appropriate supporting evidence.**]**

(7) On the registration or renewal of a registration of a licensing body the Controller shall issue to the applicant a certificate of registration in such form as the Controller shall determine.

F148**[**(7A) In this section and *section 284*—

"statement of compliance" means a document, in electronic form and signed by a person authorised by the licensing body, stating that the licensing body has complied, is complying and will comply with the requirements imposed on it by the Regulations of 2016 to the extent specified in the document;

"appropriate supporting evidence" means information supporting the statements made in the statement of compliance.

(7B) The conditions referred to in *subsection (5)(b)* shall include, in the case of a licensing body in relation to which any provisions of the Regulations of 2016 apply—

(*a*) that the licensing body has provided such further information as the Controller may require (in addition to that contained in the statement of compliance and provided as part of the appropriate supporting evidence) for ascertaining whether the licensing body has complied, is complying and will comply with requirements imposed on it by the 2016 Regulations, and

(*b*) that the statement of compliance of the licensing body, together with the appropriate supporting evidence and any further information provided by the licensing body, satisfies the Controller that the licensing body has complied, is complying and will comply with requirements imposed on it by the 2016 Regulations.**]**

Proof that licensing body may act on behalf of specified classes.

281.—A certificate granted under *section 280(7)* shall include the particulars specified in *subsection (6)* of that section and the certificate shall be evidence of the right of the licensing body, until the contrary is proved, to act on behalf of the classes of rightsowners for whom it claims representation rights or on behalf of the rightsowners who have assigned rights to it, or exclusively licensed it, as specified in that certificate.

Notification of charges.

282.—(1) A licensing body registered under this Part which proposes to impose a charge, otherwise than in accordance with the scales of charges included in an application for registration or for renewal of a registration, shall provide the Controller in writing with details of the proposed charge not less than one month before the charge comes into effect.

(2) The registration of a licensing body which fails to comply with *subsection (1)* is deemed to be cancelled from the date on which the proposed charge comes into effect.

Validity of certificates of registration.

283.—(1) A certificate of registration issued under *section 280(7)* shall be valid for a period of 12 months from the date of registration or such lesser period as may be specified by the Controller in the certificate.

(2) Subject to *section 280(4)*, a licensing body registered under this Part may apply for renewal of its registration for further periods each of which shall not exceed 12 months.

(3) An application for renewal of a registration shall be made not less than one month before the expiration of the period of validity of the certificate of registration.

(4) A term of renewal of a registration shall take effect from the expiration of the previous registration.

Refusal of application.

284.—(1) The Controller may refuse an application for renewal of a registration by a licensing body registered under this Part or cancel the registration of a licensing body where the body no longer fulfils the requirements specified in *section 280(5)*.

F149**[**(1A) The power conferred on the Controller by *subsection (1)* may not be exercised by reason of a failure by a licensing body to provide a statement of compliance or appropriate supporting evidence—

(*a*) if—

(i) the licensing body has, before the expiration of the period of validity of the certificate of registration, submitted to the Controller an application for an extension of the time within which the statement of compliance or appropriate supporting evidence is required to be provided, accompanied by a satisfactory explanation for the application,

(ii) the Controller has granted an extension of 28 days from the expiration of that period, and

(iii) the failure does not continue beyond the extension,

or

(*b*) unless the Controller has, after the time within which the statement of compliance or appropriate supporting evidence is required to be provided, issued a written notice requiring the person to provide a statement of compliance or appropriate supporting evidence within a specified period and the Controller is satisfied that the notice has not been complied with.**]**

(2) The Controller shall remove a licensing body from the Register where its application for renewal of its registration is refused or its registration is cancelled.

Indemnity for Controller.

285.—No action or other proceedings shall lie or be maintainable against the Controller (except in the case of wilful neglect of duty) in respect of anything done or omitted to be done by him or her in the *bona fide* exercise of any functions, powers or duties conferred or imposed by or under this Chapter.

Obligation of collecting societies to register (performers' property rights).

286.—(1) Any body operating as a licensing body within the meaning specified in *section 265* shall be obliged to register in accordance with the provisions of this Chapter, and to remain registered for so long as it continues to operate in this capacity.

(2) Any body to which the provisions of *subsection (1)* applies which—

(*a*) fails within 6 months of the commencement of this Chapter to register under the terms of this Chapter,

(*b*) fails within 2 months of its establishment in the case of a body established after the commencement of this Chapter to register under the terms of this Chapter, or

(*c*) continues to operate as such a body having been removed from the Register for any reason,

shall be guilty of an offence.

(3) A person guilty of an offence under *subsection (2)* shall be liable—

(*a*) on summary conviction, to a F150**[**class C fine**]**, or to imprisonment for a term not exceeding 12 months, or both, or

(*b*) on conviction on indictment, to a fine not exceeding F150**[**€130,000**]**, or to imprisonment for a term not exceeding 5 years, or both.

CHAPTER 9

Qualification: Performances

Definition of qualifying person.

287.—In this Part, and in *Part IV*—

"qualifying country" means—

(*a*) Ireland,

(*b*) another Member State of the EEA, F151**[**...**]**

(*c*) to the extent that an order under *section 289* so provides, a country designated under that F152**[**section, or**]**

F153**[**(*d*) any country, territory, state or area that is a contracting party to—

(i) the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty, adopted by the Diplomatic Conference at Geneva on December 20, 1996, or

(ii) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961;**]**

"qualifying individual" means a citizen or subject of, or an individual domiciled or ordinarily resident in, a qualifying country; and

"qualifying person" means an Irish citizen, or an individual domiciled or ordinarily resident in the State.

Qualifying performance.

288.—A performance is a qualifying performance for the purposes of the provisions of this Part and *Part IV* if it is given by a qualifying individual or a qualifying person, or takes place in a qualifying country, territory, state or area, in accordance with this Chapter.

Designation of qualifying countries.

289.—(1) The Government may be order designate as a qualifying country enjoying protection under this Part and *Part IV* any country, territory, state or area, as to which the government is satisfied that provision has been or will be made under its law giving adequate protection for Irish performances.

(2) For the purposes of this section, an "Irish performance" means a performance—

(*a*) given by an Irish citizen, or by an individual who is domiciled or ordinarily resident in the State, or

(*b*) taking place in the State.

(3) Where the law of that country, territory, state or area provides adequate protection only for certain descriptions of performance, an order under *subsection (1)* designating that country, territory, state or area may contain provision limiting

to a corresponding extent the protection afforded by this Part or *Part IV* in relation to performances connected with the country, territory, state or area.

Territorial waters and Continental Shelf.

290.—For the purposes of this Part and *Part IV*—

F154**[**(*a*) acts undertaken in, or, under or over—

(i) the waters in the portion of the sea which comprise the territorial sea of the State,

(ii) the waters in all areas of the sea to which the internal or inland waters of the State are extended by section 8 of the Maritime Jurisdiction Act 2021, and

(iii) the waters in any area which is for the time being a designated area within the meaning of the Maritime Jurisdiction Act 2021,**]**

and

(*b*) acts undertaken on an Irish ship, aircraft or hovercraft registered under the laws of the State,

shall be deemed to have been undertaken in the State.

CHAPTER 10

Duration of Rights in Performances

F155**[**Duration of rights.

291.—(1) The rights conferred by this Part shall expire 50 years after the date of the performance.

(2) Notwithstanding *subsection (1)*—

(*a*) if a recording of the performance is lawfully made available to the public within the period referred to in *subsection (1)*, the rights shall expire 50 years from the date the recording is first so made available, and

(*b*) notwithstanding *paragraph (a)* but subject to *subsection (3)*, if a sound recording of the performance is lawfully made available to the public within the period referred to in *subsection (1)*, the rights shall expire 70 years from the date the recording is first so made available.

(3) *Subsection (2)(b)* applies to a sound recording—

(*a*) in regard to which the rights of the performer and the producer would still have been protected on 1 November 2013, had the European Union (Term of Protection of Copyright and Certain Related Rights) (Directive 2011/77/EU) Regulations 2013 not come into operation on that date, or

(*b*) that is created on or after 1 November 2013.

(4) The terms provided for in *subsections (1)* and *(2)* shall be calculated from the first day of January of the year following the event that gives rise to them.**]**

CHAPTER 11

Performers' Property Rights

Performers' property rights.

292.—(1) The rights conferred on a performer by *sections 204, 205, 206* and *207* are property rights and shall be known and in *Parts III* and *IV* referred to as "performers' property rights".

(2) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of a performer's property rights in relation

to a performance, the rightsowner for the purposes of *Parts III* and *IV* is the person who is entitled to the aspect of those rights relevant for those purposes.

(3) Where a performer's property rights (or any aspect of them) are owned jointly by more than one person, references in this Part to the rightsowner shall include references to all those owners, such that, in particular, any requirement of the licence of the rightsowner requires the licence of all of them.

(4) References in *Parts III* and *IV* to the consent of a performer shall be construed in relation to the performer's property rights as references to the consent of the rightsowner.

CHAPTER 12

Transmission of Performers' Property Rights

Assignment and licences.

293.—(1) A performer's property rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) A transmission of a performer's property rights by assignment, by testamentary disposition or by operation of law may be partial, so as to apply—

(*a*) to one or more but not all of the acts a performer has the right to authorise or prohibit, or

(*b*) to part but not the whole of the period for which the rights in the performance are to subsist.

(3) An assignment of a performer's property rights, whether in whole or in part, is not effective unless it is in writing and signed by or on behalf of the assignor.

(4) A licence granted by the owner of a performer's property rights is binding on every successor in title to his or her interest in the rights, 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 undertaking any act with or without the licence of the rightsowner shall be construed accordingly.

(5) A licence granted by a prospective owner of a performer's property rights is binding on every successor in title to his or her interest (or prospective interest) in the rights, 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 undertaking any act with or without the licence of the rightsowner shall be construed accordingly.

Prospective ownership of performers' property rights.

294.—(1) Where, by an agreement made in relation to a performer's property rights in respect of a future performance and signed by or on behalf of the performer, the performer purports to assign his or her rights in such a performance, whether in whole or in part, to another person, then where, on the rights coming into existence, the assignee or his or her successor in title or another person claiming under him or her would be entitled as against all other persons to require the rights to be vested in him or her, the rights shall vest in the assignee or his or her successor in title under this section or any other person claiming under him or her.

(2) Where, at the time when any performer's property right comes into existence, the person who, if he or she were then living, would be entitled to the right is dead, the right shall devolve as if it had existed immediately before his or her death and he or she had then been the owner of the right.

(3) The rights of an assignee in a future performance shall not be prejudiced by the fact that the agreement referred to in *subsection (1)* was made before the commencement of this section.

(4) In this Part—

"future performance" means any performance which will or may take place at some date in the future;

"prospective owner", in relation to a performer's property rights, includes a person who is prospectively entitled to those rights by virtue of an agreement referred to in *subsection (1)*.

Exclusive licences.

295.—(1) In this Part an "exclusive licence" means a licence in writing which is signed by or on behalf of an owner or prospective owner of a performer's property rights 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 rightsowner and references to an exclusive licensee shall be construed accordingly.

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

Performers' property rights to pass under will with certain original recordings.

296.—Where, under a bequest (whether specific or general), a person is entitled, beneficially or otherwise, to any material thing containing an original recording of a performance which had not been made available to the public before the death of the testator, the bequest shall be construed as including any performer's property rights in relation to the recording in so far as the testator was the owner of the rights immediately before his or her death, unless a contrary intention is indicated in the will of the testator or in a codicil to that will.

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

297.—(1) Without prejudice to the right of a performer to receive equitable remuneration in respect of a rental right, where an agreement concerning film production is concluded between a performer and a film producer, the performer shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a recording of his or her performance in the film.

(2) Where a presumption of transfer of the rental right arises by virtue of *subsection (1)*, the absence of a signature by or on behalf of the performer shall not restrict the operation of *section 293* or *294*.

(3) The reference in *subsection (1)* to an agreement concluded between a performer and a film producer includes any agreement whether made by them directly or through intermediaries.

(4) The right to equitable remuneration on the transfer of the rental right applies where there is a presumed transfer under this section as in the case of an actual transfer.

Right to equitable remuneration where rental right is transferred.

298.—(1) Without prejudice to the generality of *section 297*, where a performer has transferred his or her rental right he or she retains the right to equitable remuneration for the rental.

(2) The right to equitable remuneration conferred by this section shall not be waived by the performer and the performer shall not assign the right to equitable remuneration except to a collecting society for the purpose of enabling the collecting society to exercise that right on his or her behalf.

(3) The right to equitable remuneration is transmissible by way of testamentary disposition or by operation of law, as personal or moveable property and it may be further transmitted, including by assignment, by any person who legally acquires the right.

(4) Equitable remuneration under this section is payable by the person to whom the rental right is transferred or any successor in title.

(5) Subject to *section 299*, the amount payable by way of equitable remuneration is that which has been agreed by or on behalf of the persons by and to whom it is payable.

(6) An agreement is void in so far as it purports to exclude or restrict the right to equitable remuneration conferred by this section.

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

(8) In this section "collecting society" means a society or other organisation which has as one of its main objects the exercise of the right to collect equitable remuneration under this section on behalf of more than one performer.

Equitable remuneration: reference of determination of amount to Controller.

299.—(1) In default of agreement as to the amount of equitable remuneration payable under *section 298*, the person by or to whom it is payable may apply to the Controller for an order under *subsection (4)*.

(2) Subject to *subsection (3)*, a person by or to whom equitable remuneration is payable under *section 298* may also apply to the Controller—

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

(*b*) to vary any previous determination of the Controller as to the amount payable.

(3) An application may not be made under *subsection (2)* within 12 months from the date of the previous determination except with the special leave of the Controller.

(4) On an application being made under this section the Controller shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as he or she may determine to be reasonable in the circumstances, having regard to the importance of the contribution of the performer.

(5) An order made under *subsection (4)* shall have effect from the date on which it is made or such later date as may be specified by the Controller.

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

(7) An agreement is void in so far as it purports to prevent a person challenging the amount of equitable remuneration or to restrict the powers of the Controller under this section.

F156[Termination of assignment agreement.

299A.—(1) If, in relation to a sound recording of a performance—

(*a*) the performer has made an assignment agreement with the producer,

(*b*) a period of at least 50 years has elapsed after the sound recording was first lawfully made available to the public,

(*c*) the producer does not offer copies of the sound recording for sale in sufficient quantities, or does not make it available to the public, by wire or wireless means, in such a way that members of the public may access it from a place and time chosen by them,

the performer may, in writing, notify the producer of the performer's intention to terminate the assignment agreement referred to in *paragraph (a)*.

(2) If, not later than one year from the date of notification by the performer of his or her intention to terminate the assignment agreement, the producer has not offered copies of the sound recording for sale, or made it available to the public, as described in *subsection (1)(c)*, the performer may terminate the assignment agreement by notice in writing to the producer.

(3) Upon the termination of the assignment agreement in accordance with *subsection (2)*, all rights of the producer in the sound recording shall expire and the rights transferred or assigned to the producer by the performer under the assignment agreement shall revert to the performer.

(4) An agreement is void in so far as it purports to exclude or restrict the right to terminate an assignment agreement conferred by this section.

(5) Where the performance of more than one performer is captured in a sound recording and more than one assignment agreement has been made in relation to that sound recording, *subsection (3)* shall not take effect until the last of the existing assignment agreements in relation to that sound recording has been terminated in accordance with *subsection (2)*.

(6) In this section and in *sections 299B* to *299E*—

"assignment agreement" means an agreement between the performer and the producer by which the performer transfers or assigns one or more of the transmissible rights conferred on him or her by this Part to the producer;

"producer" means the person for the time being entitled to the copyright in the sound recording.**]**

F157**[**Annual supplementary remuneration.

299B.—(1) If, in relation to a sound recording of a performance—

(*a*) the performer has made an assignment agreement that gives the performer the right to claim a non-recurring remuneration, and

(*b*) the minimum period specified in *section 299A(1)(b)* has elapsed,

the performer shall have the right to obtain an annual supplementary remuneration from the producer for each full year immediately following the fiftieth year after the sound recording was first lawfully made available to the public.

(2) The right of the performer to obtain an annual supplementary remuneration in accordance with this section shall not be waived by the performer and an agreement is void in so far as it purports to exclude or restrict that right.

(3) The overall amount to be set aside, at least once a year, by a producer for payment of annual supplementary remuneration pursuant to this section shall correspond to 20% of the gross revenue that the producer has derived for the preceding full year referred to in *subsection (1)*.

(4) The right of a performer referred to in *subsection (1)* to obtain an annual supplementary remuneration in accordance with this section shall be administered by a collecting society on his or her behalf as follows:

(*a*) the producer shall pay the annual supplementary remuneration referred to in *subsection (1)* to which the performer is entitled to a collecting society within one month of its having been set aside;

(*b*) the collecting society shall then distribute the annual supplementary remuneration referred to in paragraph (a) to the performer.

(5) For the purposes of this section, the producer or the former producer of a sound recording shall, if requested by the performer in writing, inform the performer in writing as soon as may be, and in any event not more than 40 days after receipt of the said request, of any information in the possession of the producer or former producer that may be necessary for the performer in order to secure payment of that remuneration.

(6) If the producer or the former producer fails to supply the information specified in *subsection (5)* within the period specified in that subsection, the performer may seek an injunction from the High Court requiring the producer or former producer to provide the information.

(7) The "gross revenue" referred to in *subsection (3)* means the revenue, before deducting costs, derived by the producer from the exclusive rights of distribution, reproduction and making available of the sound recording.**]**

F158**[**Recurring payments.

299C.—If, in relation to a sound recording of a performance—

(*a*) an assignment agreement gives the performer the right to claim recurring payments, and

(*b*) the period specified in *section 299A(1)(b)* has elapsed,

neither advance payments nor any contractually defined deductions shall be deducted from the payments made to the performer after the period referred to in *paragraph (b)* has elapsed.**]**

F159**[**Application of *sections 299A* to *299C*.

299D.—*Sections 299A* to *299C* shall apply to assignment agreements in relation to sound recordings—

(*a*) in regard to which the rights of the performer and the producer would still have been protected on 1 November 2013, had the European Union (Term of Protection of Copyright and Certain Related Rights) (Directive 2011/77/EU) Regulations 2013 not come into operation on that date, or

(*b*) that are created on or after 1 November 2013.**]**

F160**[**Deemed continuation in force and modification of assignment agreements.

299E.—(1) Where an assignment agreement was made before 1 November 2013, it shall be deemed to continue in force, unless it clearly indicates otherwise, until the expiration of the rights of the performer under this Act that were transmitted pursuant to the assignment agreement, or until the assignment agreement is terminated pursuant to *section 299A*.

(2) An assignment agreement that entitles a performer to recurring payments and which was concluded before 1 November 2013 may be modified for the benefit of the performer once the period specified in *section 299A(1)(b)* has elapsed until the expiration of the rights of the performer under this Act that were transmitted pursuant to the assignment agreement, or until the assignment agreement is terminated pursuant to *section 299A.***]**

CHAPTER 13

Transmission of Recording Rights and Performers' Non-Property Rights

Performers' non-property rights.

300.—(1) The rights conferred on a performer by *sections 203, 209* and *212* are non-property rights and shall be known and in *Parts III* and *IV* referred to as "performers' non-property rights".

(2) A performer's non-property rights are not assignable or transmissible, except to the extent provided for in *subsection (3)*.

(3) On the death of a person entitled to a performer's non-property rights—

(*a*) the rights pass by testamentary disposition to such person as the person entitled to the right may direct, and

(*b*) where there is no such direction, the right is exercisable by the personal representatives of the person entitled to the right.

(4) References in *Parts III* and *IV* to the performer, in the context of the person having any right referred to in *subsection (1)*, shall be construed as references to the person for the time being entitled to exercise those rights.

(5) Where, under *subsection (3)(a)*, a right becomes exercisable by more than one person, it is exercisable by each of them.

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

Transmissibility of rights of person having recording rights.

301.—(1) The rights conferred by this Part on a person having recording rights in relation to a performance are not assignable or transmissible.

(2) *Subsection (1)* shall not affect the operation of *section 215(2)(b)* or *section 215(3)(b)* in so far as those provisions confer rights under this Part on a person to whom the benefit of a contract or licence is assigned.

Consent.

302.—(1) For the purposes of this Part and *Part IV*, consent by a person having a performer's non-property rights, or by a person having recording rights, may be given in relation to a specific performance, a specified description of performances or performances generally, and may relate to past or future performances.

(2) A person having recording rights in relation to a performance shall be bound by any consent given by a person through whom he or she derives his or her rights under the exclusive recording contract or licence concerned, in the same way as if the consent had been given by him or her.

(3) Where a performer's non-property right passes to another person, any consent binding on the person previously entitled to the right binds the person to whom the right passes in the same way as if the consent had been given by him or her.

CHAPTER 14

Remedies: Owner of Performers' Property Rights

Infringement actionable by rightsowner.

303.—(1) An infringement of a performer's property rights is actionable by the rightsowner.

(2) In an action for infringement of a performer's property rights under this section all relief by way of damages, injunctions, account of profits or otherwise is available to the plaintiff as it is available in respect of the infringement of any other property right.

(3) Where, in an action for infringement of a performer's property rights, the defendant does not admit that the plaintiff is owner of the performer's property rights, the court may direct that evidence in relation to ownership of the performer's property rights be given on affidavit and the court may decide the issue on consideration of any affidavit presented to it unless it is satisfied that any conflict of evidence between the affidavits may not be resolved other than by hearing oral testimony in which case the court may order that oral evidence may be adduced.

(4) Hearsay evidence may be accepted for the purposes of any hearing under *subsection (3)*.

Award of damages in infringement action.

304.—(1) The court may, in an action for infringement of a performer's property right award such damages as, having regard to all the circumstances of the case, it considers just.

(2) Without prejudice to any other remedy, where, in an action for infringement of a performer's property rights, it is shown that at the time of the infringement the defendant did not know and had no reason to believe that the rights subsisted in the recordings to which the action relates, the plaintiff is not entitled to damages against the defendant.

(3) In exercising its powers under *subsection (1)* in addition to or as an alternative to compensating the plaintiff for financial loss, the court may award aggravated or exemplary damages or both aggravated and exemplary damages.

Undertakings concerning licences of right.

305.—(1) Where, in proceedings for infringement of a performer's property rights in respect of which a licence is available as of right, the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Controller—

(*a*) no injunction shall be granted against the defendant,

(*b*) no order for delivery up shall be made under *section 255*, and

(*c*) the amount recoverable against the defendant by way of damages or on an account of profits shall not exceed three times the amount which would have been payable by the defendant as licensee where a licence on those terms had been granted before the earliest infringement.

(2) An undertaking under *subsection (1)* may be given at any time before the final order in the proceedings without any admission of liability.

(3) Nothing in this section shall affect the remedies available in respect of an infringement committed before a licence was available as of right.

CHAPTER 15

Rights and Remedies: Exclusive Licensee

Rights and remedies of exclusive licensee.

306.—(1) An exclusive licensee has, except as against the owner of the performer's property rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) The rights and remedies of an exclusive licensee are concurrent with those of the rightsowner and references in *sections 255, 256, 303, 304* and *305* to the rightsowner shall be construed accordingly.

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

Exercise of concurrent rights.

307.—(1) Where an action for infringement of a performer's property rights brought by the rightsowner or an exclusive licensee relates, whether in whole or in part, to an infringement in respect of which they have concurrent rights of action, the rightsowner or, as the case may be, the exclusive licensee, may not, without the leave of the appropriate court, proceed with the action unless the other is either joined as plaintiff or added as a defendant.

(2) A rightsowner or exclusive licensee who is added as a defendant under *subsection (1)* shall not be liable for any costs in an action unless he or she takes part in the proceedings.

(3) Nothing in this section shall affect the granting of interlocutory relief on an application by the rightsowner or exclusive licensee.

(4) Where an action for infringement of a performer's property rights is brought which relates, whether in whole or in part, to an infringement in respect of which the rightsowner and an exclusive licensee have or had concurrent rights of action—

(*a*) in assessing damages the appropriate court shall have regard to—

(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 where an award of damages has been made, or an account of profits has been directed, in favour of one of them in respect of the infringement; and

(*c*) the appropriate court shall, where an account of profits is directed, apportion the profits between them as the appropriate court thinks fit, subject to any agreement between the rightsowner and the exclusive licensee.

(5) *Subsection (4)* shall apply whether or not the rightsowner and the exclusive licensee are both parties to the action.

(6) Before—

(*a*) applying for an order for delivery up under *section 255*,

(*b*) applying for an order to seize illicit recordings, articles or devices under *section 256*, or

(*c*) exercising the right to seize and detain conferred by *section 257*,

the rightsowner shall notify any exclusive licensee having concurren rights and the appropriate court may, on the application of the licensee, make such order for delivery up, seizure of illicit recordings, articles or devices or, as the case may be, prohibiting or permitting the exercise by the rightsowner of the right to seize and detain, as it thinks fit, having regard to the terms of the licence between the rightsowner and the exclusive licensee.

CHAPTER 16

Remedies: Owner of Performers' Non-Property Rights and Person Having Recording Rights

Infringement actionable as a breach of statutory duty.

308.—(1) An infringement of—

(*a*) a performer's non-property rights, or

(*b*) any right conferred by this Part on a person having recording rights,

is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) A person may apply to the appropriate court for damages or other relief in respect of an infringement of a right referred to in *subsection (1)*.

PART IV

PERFORMERS' MORAL RIGHTS

Paternity right.

309.—(1) Subject to the exceptions specified in *section 310*, a performer shall, where practicable, have the right to be identified as the performer of his or her performance.

(2) Where a performer uses a pseudonym, initials or other form of identification that form shall be used to identify his or her performance.

(3) The right conferred by this section shall be known and in this Part referred to as the "paternity right".

Exceptions to paternity right.

310.—(1) The paternity right shall not be infringed by anything done under *section 222, 223(2), 237* or *238*.

(2) The paternity right shall not apply in relation to a performance or a recording of a performance made for the purpose of reporting current events.

Integrity right.

311.—(1) Subject to the exceptions specified in *section 312*, a performer shall have the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his or her performance or a recording thereof, which would prejudice his or her reputation.

(2) The right conferred by this section shall be known and in this Part referred to as the "integrity right".

Exceptions to integrity right.

312.—(1) Subject to *subsection (2)*, the integrity right shall not apply in relation to a performance or a recording of a performance made for the purpose of reporting current events.

(2) The integrity right is not infringed by anything done for the purposes of—

(*a*) avoiding any contravention of civil or criminal law,

(*b*) complying with a duty imposed by or under an enactment, or

(*c*) in the case of authorised broadcasters or authorised cable programme service providers, avoiding the inclusion in a programme which is broadcast or included in a cable programme service by those broadcasters or providers, of anything which offends public morality or which is likely to encourage or incite to crime or to lead to public disorder.

(3) *Subsection (2)* shall not apply unless the performer is identified at the time of the act concerned or has previously been identified in or on recordings of the performance which have been lawfully made available to the public and there is a sufficient disclaimer.

(4) In this Part "sufficient disclaimer", in relation to an act capable of infringing the integrity right, means a clear and reasonably prominent indication given at the time of the act, or where the performer is then identified, appearing along with the identification, that the recording has been subjected to an action to which the performer has not consented.

Secondary infringement of integrity right: possessing or dealing.

313.—A person infringes the integrity right where he or she—

(*a*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*b*) imports into the State, otherwise than for his or her private and domestic use,

(*c*) in the course of a business, trade or profession, has in his or her possession, custody or control, or

(*d*) makes available to the public,

a recording of a performance which has, and which he or she knows or has reason to believe has, been subjected to any distortion, mutilation or other modification or other derogatory action within the meaning of *section 311*.

False attribution of performances.

314.—(1) A person has the right not to have a performance falsely attributed to him or her as performer.

(2) The right conferred by *subsection (1)* is infringed by a person where he or she—

(*a*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*b*) imports into the State, otherwise than for his or her private and domestic use,

(*c*) in the course of a business, trade or profession, has in his or her possession, custody or control, or

(*d*) makes available to the public,

a recording of a performance, in or on which there is a false attribution, knowing or having reason to believe that the attribution is false.

(3) The right conferred by *subsection (1)* is infringed by a person where he or she—

(*a*) sells, rents or lends, or offers or exposes for sale, rental or loan,

(*b*) imports into the State, otherwise than for his or her private and domestic use,

(*c*) in the course of a business, trade or profession, has in his or her possession, custody or control, or

(*d*) makes available to the public,

a recording of a performance which has been altered as being a recording of the unaltered performance, knowing or having reason to believe that the recording has been altered.

(4) In this Part, "attribution", in relation to a performance, means a statement, express or implied, as to who is the performer.

F161**[**Duration of moral rights.

315.—(1) The rights conferred by this Part shall expire 50 years after the date of the performance.

(2) Notwithstanding *subsection (1)*—

(*a*) if a recording of the performance is lawfully made available to the public within the period referred to in *subsection (1)*, the rights shall expire 50 years from the date the recording is first so made available, and

(*b*) notwithstanding *paragraph (a)* but subject to *subsection (3)*, if a sound recording of the performance is lawfully made available to the public within the period referred to in *subsection (1)*, the rights shall expire 70 years from the date the recording is first so made available.

(3) *Subsection (2)(b)* applies to a sound recording—

(*a*) in regard to which the rights of the performer and the producer would still have been protected on 1 November 2013, had the European Union (Term of Protection of Copyright and Certain Related Rights) (Directive 2011/77/EU) Regulations 2013 not come into operation on that date, or

(*b*) that is created on or after 1 November 2013.

(4) The terms provided for in *subsections (1)* and *(2)* shall be calculated from the first day of January of the year following the event that gives rise to them.**]**

Waiver of rights.

316.—(1) Subject to *subsection (3)*, any of the rights conferred by this Part may be waived.

(2) A waiver made under this section shall be in writing and signed by the person waiving the right.

(3) A waiver made under *subsection (1)*—

(*a*) may relate to a specific performance or a recording thereof, to performances or recordings thereof of a specified description or to performances or recordings there of generally, and may relate to existing or future performances or recordings thereof, and

(*b*) may be conditional or unconditional, and may be expressed to be subject to revocation,

and where a waiver is made in favour of the owner or prospective owner of the rights in the performance or recording thereof, or performances or recordings thereof, to which it relates, that waiver shall be presumed to extend to his or her licensees, successors in title or other persons, claiming under them unless a contrary intention is expressed.

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

(5) It shall not be an infringement of any of the rights conferred by this Part for a person to undertake any act where the person entitled to the right conferred by this Part has consented to the use of those rights by that other person.

Performers' moral rights not assignable or alienable.

317.—The rights conferred by this Part shall be incapable of assignment or alienation.

Transmission of moral rights on death.

318.—(1) On the death of a person entitled to the paternity right or the integrity right—

(*a*) the right passes by testamentary disposition to such person as the person entitled to the right may direct,

(*b*) where there is no direction as to whom the right passes but the performer's property rights in the recording of the performance concerned forms part of an estate, the right passes to the person to whom the performer's property rights pass, and

(*c*) where the right does not pass under *paragraph (a)* or *(b)*, it is exercisable by the personal representatives of the person entitled to the right.

(2) Where a performer's property rights forming part of an estate pass in part to one person and in part to another, so as to apply—

(*a*) to one or more, but not all, of the acts the rightsowner has the right to authorise or prohibit, or

(*b*) to part, but not the whole, of the period for which the performer's property rights are to subsist,

any right which passes with the performer's property rights by virtue of *subsection (1)* is divided accordingly.

(3) Where, under *subsection (1)*, a right becomes exercisable by more than one person—

(*a*) it may, in the case of the paternity right, be exercised by any of them,

(*b*) it is, in the case of the integrity right a right exercisable by each of them, and

(*c*) any waiver of the right under *section 316* made by one of them shall not affect the rights of the other persons.

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

(5) An infringement of the right conferred by *section 316* in relation to a false attribution of a performance after the death of a person is actionable by the personal representatives of that person.

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

Remedies for infringement of moral rights.

319.—(1) An infringement of the rights conferred by *section 309*, *311* or *314* is actionable as a breach of statutory duty owed to the person entitled to the right concerned.

(2) A person may apply to the appropriate court for damages or other relief in respect of an infringement of a right conferred by *section 309*, *311* or *314*.

(3) In proceedings for infringement of the right conferred by *section 311*, the appropriate court may grant an injunction prohibiting any act unless a sufficient disclaimer is made, on such terms and in such a manner as is approved of by the court, dissociating the person entitled to the right from the treatment of the performance or of a recording of the performance.

PART V

DATABASES

CHAPTER 1

Rights in Databases

Interpretation.

320.—(1) In this Part—

"extraction", in relation to the contents of a database, means the permanent or temporary transfer of all or a substantial part of the contents to another medium by any means or in any form;

"insubstantial", in relation to the contents of a database, shall be construed subject to *section 324(3)*;

"investment" includes any investment, whether of financial, human or technical resources and cognate words shall be construed accordingly;

"jointly", in relation to the making of a database which is made jointly, shall be construed as referring to all the makers of the database;

"lawful user", in relation to a database, means any person who, whether under a licence to undertake any of the acts restricted by any database right in the database, or otherwise, has a right to use the database;

"re-utilisation", in relation to the contents of a database, means making those contents available to the public by any means;

"substantial", in relation to the investment, extraction or re-utilisation, means substantial in terms of quantity or quality or a combination of both.

(2) The making of a copy of a database available for use, on terms that it is to be or may be returned after a limited period of time, otherwise than for direct or indirect economic or commercial advantage, through an establishment to which the public have access F162**[**...**]**, shall not be taken for the purposes of this Part to constitute extraction or re-utilisation of the contents of the database.

(3) Where the making of a copy of a database available through an establishment to which members of the public have access F162**[**...**]** gives rise to a payment the amount of which does not exceed that which is necessary to cover the operating costs of the establishment there is no direct or indirect economic or commercial advantage for the purposes of *subsection (2)*.

(4) *Subsection (2)* shall not apply to the making of a copy of a database available for on the spot reference use.

(5) Where a copy of a database has been sold within the Member States of the EEA by, or with the consent of, the owner of the database right in the database, the further sale within the Member States of the EEA of that copy for the purposes of this Part shall not be taken to constitute extraction or re-utilisation of the contents of the database.

CHAPTER 2

Subsistence of Database Right

Database right.

321.—(1) A property right to be known and in this Part referred to as the "database right" subsists, in accordance with this Part, in a database where there has been a substantial investment in obtaining, verifying or presenting the contents of the database.

(2) Subject to this Act, the owner of the database right may undertake or authorise others to undertake certain acts in the State in relation to the database, being acts which are designated by this Act as acts restricted by the database right.

(3) For the purposes of this section it is immaterial whether or not the database or any of its contents is a copyright work.

(4) The database right shall not subsist in a database unless the requirements specified in this Part with respect to qualification are complied with.

CHAPTER 3

Maker and Ownership: Databases

Maker of database.

322.—(1) Subject to the provisions of this section, the person who takes the initiative in obtaining, verifying or presenting the contents of a database and assumes the risk of investing in that obtaining, verification or presentation shall be regarded as the maker of, and as having made, the database.

(2) Where a database is made by an employee in the course of employment, his or her employer shall be regarded as the maker of the database, subject to any agreement to the contrary.

(3) Subject to *subsection (4)*, where a database is made by an officer or employee of the Government in the course of his or her duties, the Government shall be regarded as the maker of the database.

(4) Where a database is made by or under the direction or control of either or both of the Houses of the Oireachtas—

(*a*) the House by whom, or under whose direction or control, the database is made shall be regarded as the maker of the database, and

(*b*) where the database is made by or under the direction or control of both Houses, both Houses shall be regarded as the joint makers of the database.

(5) For the purposes of this Part, a database is made jointly where two or more persons acting together in collaboration take the initiative in obtaining, verifying or presenting the contents of the database and assume the risk of investing in that obtaining, verification or presentation.

(6) Where a database is made by an organisation prescribed by the Minister under *section 196(2)*, or by an officer or employee of such an organisation in the course of his or her duties, that organisation shall be regarded as the maker of the database.

(7) Where the database right is conferred on a person by an enactment that person shall be regarded as the maker of the database.

First ownership of database right.

323.—The maker of a database shall be the first owner of the database right in the database.

CHAPTER 4

Restricted Acts: Databases

Acts restricted by database right.

324.—(1) Subject to the exceptions specified in *Chapter 8* of this Part and to the provisions relating to licensing in *Chapter 11* of this Part, the owner of the database right has the right to undertake or to authorise others to undertake all or any of the following acts in relation to all or a substantial part of the contents of a database—

(*a*) extraction, or

(*b*) re-utilisation,

and those acts shall be known and in this Part referred to as "acts restricted by the database right".

(2) The database right is infringed by a person who, without the licence of the owner of the database right, undertakes, or authorises another to undertake, either of the acts restricted by the database right.

(3) For the purposes of this Part, the repeated and systematic extraction or re-utilisation of insubstantial parts of the contents of a database which conflicts with the normal exploitation of the database or which prejudices the interests of the maker of the database shall be deemed to be extraction or re-utilisation of a substantial part of those contents.

CHAPTER 5

Duration of Database Right

Term of protection of database right.

325.—(1) The database right shall expire 15 years from the end of the calendar year in which the making of the database was completed.

(2) Where a database is lawfully re-utilised before the expiration of the period referred to in *subsection (1)*, the database right in the database shall expire 15 years from the end of the calendar year in which the database was first so re-utilised.

(3) Any substantial change to the contents of a database, including a substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment shall qualify the database resulting from that investment for its own terms of protection under this section.

(4) This section applies notwithstanding *paragraph 45* of the *First Schedule*.

CHAPTER 6

Qualification: Databases

Qualification for database right.

326.—(1) Subject to *Chapter 2* of this Part, the database right shall subsist in a database where, at the material time, its maker or, where it was made jointly, one or more of its makers, is—

(*a*) a citizen or subject of, or other individual domiciled or ordinarily resident in, a Member State of the EEA,

(*b*) a body incorporated under the law of a Member State of the EEA and which at the material time satisfied one of the conditions specified in *subsection (3)*, or

(*c*) a partnership or unincorporated body formed under the law of a Member State of the EEA and which at the material time satisfied the condition specified in *subsection (3)(a)*.

(2) The database right shall subsist in a database the maker of which is deemed to be the Government, or either or both of the Houses of the Oireachtas, or a prescribed international organisation, in accordance with *section 322*.

(3) The conditions referred to in *paragraphs (b)* and *(c)* of *subsection (1)* are—

(*a*) that the body has its principal place of business or operations within a Member State of the EEA,

(*b*) that the body has its registered office within a Member State of the EEA and operates in a Member State of the EEA, and

(*c*) that the body has a genuine link with the economy of the State.

(4) The Government may by order extend the provisions of this section to countries, territories, states or areas outside the Member States of the EEA, where the order is made pursuant to or in conformity with an agreement of the Council of the European Communities allowing such an extension of protection on the basis that comparable protection of databases is available under the law of those countries, territories, states or areas.

(5) For the purposes of this section, the material time in relation to a database shall be—

(*a*) in the case of a database which has not been lawfully re-utilised when the database was made or, where the making of the database extended over a period, a substantial part of that period, or

(*b*) in the case of a database which has been lawfully re-utilised when the database was first lawfully re-utilised or, where the maker had died before that time, immediately before his or her death.

CHAPTER 7

Rights and Obligations of Lawful Users

Avoidance of certain terms affecting lawful users.

327.—(1) Without prejudice to *section 324(3)*, a lawful user of a database shall be entitled to extract or re-utilise insubstantial parts of the contents of the database for any purpose.

(2) Where, under an agreement, a person has a right to use a database, any term or condition in the agreement shall be void in so far as it purports to prevent that person from extracting or re-utilising insubstantial parts of the contents of the database for any purpose.

(3) While exercising the entitlement conferred by *subsection (1)*, a lawful user of a database shall not prejudice the owner of any right conferred by this Act in respect of works or other subject matter contained in the database.

CHAPTER 8

Acts Permitted in Respect of Database Right

Exemptions in respect of databases.

328.—In this Part an act may be exempted under more than one category of exemption and the exemption of an act under one category of exemption shall not preclude its exemption under another category.

Fair dealing: research or private study.

329.—(1) The database right in a non-electronic database which has been re-utilised is not infringed by fair dealing with a substantial part of its contents by a lawful user of the database where that part is extracted for the purposes of F163**[**education, research**]** or private study.

(2) For the purposes of this Part "fair dealing" means the extraction of the contents of a database by a lawful user to an extent which will not unreasonably prejudice the interests of the rightsowner.

Education

Exception for educational establishments.

330.—(1) The database right in a database is not infringed by fair dealing with a substantial part of its contents by a lawful user of the database where that part is

extracted for the purposes of illustration in the course of F164**[**education or of preparation for education**]** and where—

(*a*) the extraction is done by or on behalf of a person giving or receiving F164**[**education**]**, and

(*b*) the source is indicated.

(2) For the purposes of this section "lawful user" includes an educational establishment.

F165**[**Cultural Heritage Institutions – databases

330A.—(1) The database right in a database is not infringed by a cultural heritage institution making available, for non-commercial purposes, out-of-commerce works or other subject matter that are permanently in its collections, where—

(*a*) no collective management organisation exists that fulfils the conditions set out in Regulation 8(1)(a) of the European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021 in relation to that database right,

(*b*) it is accompanied by sufficient acknowledgment, and

(*c*) such work is only made available on non-commercial websites.

(2) The owner of a database right may exclude his or her work from the use referred to in *subsection (1)* at any time by notifying the relevant cultural heritage institution by electronic or other means and by including the following in the notice:

(*a*) notification that the owner is asserting his or her right pursuant to this section;

(*b*) sufficient details of the work to enable it to be identified and removed from public display.

(3) Upon receipt of a written request in accordance with *subsection (2)*, a cultural heritage institution shall terminate its use of the work or works referred to in that written request within 4 weeks of receiving it.

(4) This section shall not apply to sets of out-of-commerce works or other subject matter if, on the basis of the reasonable effort referred to in *subsection (5)*, there is evidence that such sets predominantly consist of—

(*a*) works, other than cinematographic or audiovisual works, first published or, in the absence of publication, first broadcast in a third country,

(*b*) cinematographic or audiovisual works, of which the producers have their headquarters or habitual residence in a third country, or

(*c*) works of third country nationals, where after a reasonable effort no Member State or third country could be determined pursuant to *paragraphs (a)* and *(b)*.

(5) At least 6 months before the work used under *subsection (1)* is distributed, communicated to the public or made available to the public, cultural heritage institutions, collective management organisations and library authorities, within the meaning of section 32 of the Local Government Act 1994, shall provide the following information on the Out-of-Commerce Works Portal established by the European Union Intellectual Property Office:

(*a*) the title, where possible, the author, and a brief summary of the contents of the out-of-commerce work that is proposed to be used in accordance with *subsection (1)*,

(*b*) the information about the options available to rightholders under this section, and

(*c*) as soon as it is available and where relevant, information on the parties to the licence, the territories covered and the uses authorised under the license.

(6) For the purposes of *subsection (1)*, a work can be considered to be permanently in the collections of a cultural heritage institution where it is owned or permanently held by that institution, for example as a result of a transfer of ownership or a licence agreement, legal deposit obligations or permanent custody arrangements.**]**

Public Administration

Parliamentary or judicial proceedings.

331.—The database right in a database is not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting those proceedings.

Statutory inquiries.

332.—(1) The database right in a database is not infringed by anything done for the purposes of a statutory inquiry or for the purpose of reporting any such inquiry.

(2) The database right in a database is not infringed by the making available of copies of a report of a statutory inquiry containing the contents of the database.

Copying of material in public records.

333.—All or a substantial part of the contents of a database which are comprised in records which are open to public inspection may be extracted or re-utilised without infringing the database right in the database.

Material open to public inspection or on statutory register.

334.—(1) Without prejudice to the generality of *section 333*, where the contents of a database are open to public inspection pursuant to a statutory requirement, or are on a statutory register, the database right in the database is not infringed by the extraction of all or a substantial part of the contents, for a purpose which does not involve re-utilisation of all or a substantial part of the contents as contains factual information of any description, by or with the authority of the person required to make the contents of the database open to public inspection or, as the case may be, the person maintaining the register.

(2) Where the contents of a database are open to public inspection pursuant to a statutory requirement, or are on a statutory register, the database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents for the purpose of enabling the contents of the database to be inspected at another time or place, or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed, by or with the authority of the person required to make the contents of the database open to public inspection or, as the case may be, the person maintaining the register.

(3) Where all or a substantial part of the contents of a database are re-utilised under this section the person granting access to the contents of the database shall ensure that those contents bear a mark clearly indicating that they are provided for the purpose of inspection and that no other use of the contents of the database may be made without the licence of the owner of the database right.

(4) All or a substantial part of the contents of a database may not be provided under this section unless the person granting access to the contents of the database has first obtained from the person requesting the contents of the database a declaration, in such form as may be prescribed, indicating that the contents of the database are required for the sole purpose of enabling the contents of the database to be inspected at another time or place or to otherwise facilitate the exercise of the right of public inspection.

(5) Where the contents of a database which are open to public inspection pursuant to a statutory requirement, or are on a statutory register, contain information about matters of general, scientific, technical, commercial or economic interest, the database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents for the purpose of disseminating that information, by or with the authority of the person required to make the contents of the database open to public inspection or, as the case may be, the person maintaining the register.

(6) The Minister may prescribe the conditions which are to be complied with before the contents of a database are made available to the public.

(7) The Minister may by order provide that *subsections (1)* to *(5)* apply—

(*a*) to the contents of a database made open to public inspection by—

(i) an international organisation specified in the order, or

(ii) a person specified in the order who has functions in the State under an international agreement to which the State is a party,

or

(*b*) to a register maintained by an international organisation specified in the order,

as they apply in relation to the contents of a database open to public inspection pursuant to a statutory requirement, or on a statutory register.

Databases communicated to Government or Oireachtas.

335.—(1) Where the contents of a database have been communicated to the Government or either or both of the Houses of the Oireachtas for any purpose, by or with the licence of the owner of the database right, and any fixation or any thing containing the contents of the database is owned by, or is in the custody, possession or control of the Government or either or both of the Houses of the Oireachtas, the Government or either or both of the Houses of the Oireachtas may extract or re-utilise all or a substantial part of the contents, for the purpose for which the contents of the database were communicated to them, or for any related purpose which could reasonably have been anticipated by the owner of the database right, without infringing the database right in the database.

(2) The Government or either or both of the Houses of the Oireachtas shall not re-utilise all or a substantial part of the contents of a database or cause the contents to be extracted or re-utilised, by virtue of this section, where the contents have previously been lawfully re-utilised otherwise than under this section.

Acts done under statutory authority.

336.—(1) Where the undertaking of a particular act is specifically authorised by an enactment then, unless the enactment provides otherwise, the undertaking of that act shall not infringe the database right in a database.

(2) Nothing in this section shall be construed as excluding any defence available under any enactment.

Anonymous or Pseudonymous Database

Anonymous or pseudonymous databases: acts permitted.

337.—(1) The database right in a database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents of the database when, or pursuant to arrangements made when—

(*a*) it is not possible by reasonable inquiry to ascertain the identity of the maker of the database, and

(*b*) it is reasonable to assume that the database right has expired.

(2) In the case of a database made jointly, the reference in *subsection (1)*, to the possibility of ascertaining the identity of the maker of the database shall be construed as a reference to its being possible to ascertain the identity of any of its makers.

CHAPTER 9

Application of Copyright Provisions to Database Right

Application of copyright provisions to database right.

338.—*Sections 120, 121, 122, 123, 127, 128, 130, 131, 132, 133, 135* and *136* shall apply in relation to the database right and databases in which that right subsists as they apply in relation to copyright and copyright works.

CHAPTER 10

Presumptions

Presumptions relevant to database right.

339.—(1) The presumptions specified in this section shall apply in proceedings, whether civil or criminal, for infringement of the database right in any database.

(2) (*a*) The database right shall be presumed to subsist in a database unless the contrary is proved.

(*b*) Except as otherwise provided in this section, where the subsistence of the database right in a database is proved or admitted, or is presumed under *paragraph (a)*, the plaintiff shall be presumed to be the owner or, as the case may be, the exclusive license of the database right, unless the contrary is proved.

(3) Where—

(*a*) a name purporting to be that of the maker of a database or of the owner or exclusive licensee of the database right, as the case may be, appears on copies of the database, or

(*b*) a copy of a database bears or incorporates a statement, label or other mark indicating that a person is the maker of the database or the owner or exclusive licensee of the database right, as the case may be,

that name, statement, label or mark shall be admissible as evidence of the fact stated or indicated which shall be presumed to be correct, unless the contrary is proved.

(4) The person named or in respect of whom a statement, label or other mark appears on or is borne on or is incorporated in copies of a database in accordance with *subsection (3)* shall be presumed not to have made the database—

(*a*) in the course of employment referred to in *section 322(2)*,

(*b*) in the course of employment as an officer or employee of a prescribed international organisation referred to in *section 322(6)*,

(*c*) in the course of employment as an officer or employee of the Government referred to in *section 322(3)*,

(*d*) under the direction or control of either or both of the Houses of the Oireachtas referred to in *section 322(4)*, or

(*e*) in circumstances in which the database right is conferred on another person by an enactment referred to in *section 322(7)*.

(5) Where a database purports to be a database made jointly, *subsections (2), (3)* and *(4)* shall apply in relation to each person purporting to be one of the makers of the database.

CHAPTER 11

Database Right: Licensing

Licensing schemes and licensing bodies.

340.—(1) In this Part—

"licences" means licences to extract or re-utilise all or a substantial part of the contents of a database or to authorise others to do so;

"licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, either as owner or prospective owner of a database right, or as exclusive licensee, or as agent for him or her, of database right licences, and whose objects include the granting of licences relating to the databases of more than one database right owner;

"licensing scheme" means a scheme specifying—

(*a*) the classes of case in which the operator of the scheme, or the person on whose behalf that operator acts, is willing to grant database right licences, and

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

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

(2) References in this Part to licences or licensing schemes relating to databases of more than one database right owner shall not include licences or schemes relating to databases made by, or by employees of, or commissioned by, a single individual, firm, company or group of companies, including holding companies and their subsidiaries.

References and Applications Relating to Licensing Schemes

General references.

341.—*Sections 342* to *347* apply to licensing schemes which are operated by licensing bodies in relation to the database right in databases of more than one database right owner, in so far as they relate to licences for the extraction or re-utilisation of all or a substantial part of the contents of a database.

Reference of proposed licensing scheme to Controller.

342.—(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Controller by an organisation which claims to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply.

(2) The Controller shall not consider a reference by an organisation under *subsection (1)* unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) The Controller may refuse to consider a reference under *subsection (1)* on the ground that the reference is premature.

(4) Where the Controller decides to consider a reference under *subsection (1)* he or she shall consider the subject matter of the reference and make an order, either confirming or varying the proposed scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Reference of licensing scheme to Controller.

343.—(1) Where a licensing scheme is in operation and a dispute arises with respect to the scheme between the operator of the scheme and—

(*a*) a person claiming that he or she 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 operator, person or organisation may refer the scheme to the Controller in so far as it relates to cases of that description.

(2) The Controller shall not consider a reference by an organisation under *subsection (1)* unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) A scheme which has been referred to the Controller under *subsection (1)* shall remain in operation until proceedings in relation to the reference are concluded.

(4) The Controller shall consider the matter referred to him or her and shall make an order, confirming or varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Further reference of scheme to Controller.

344.—(1) Where the Controller has, in respect of a licensing scheme under *section 342* or *343* or under this section, made an order in respect of a scheme, and the order remains in force, the persons to whom this section applies may refer the scheme to the Controller in so far as it relates to cases of that description.

(2) This section applies to—

(*a*) the operator of the scheme,

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

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

(3) Where an order made under *section 342* or *343* or this section is in force the licensing scheme in respect of which the order is made shall not, except with the special leave of the Controller, be referred to the Controller in respect of the same description of cases—

(*a*) within 12 months from the date of the order in respect of the previous reference, or

(*b*) where the order was made so as to be in force for 15 months or less, until the last 3 months before the expiration of the order.

(4) A scheme which has been referred to the Controller under *subsection (1)* shall remain in operation until proceedings in relation to the reference are concluded.

(5) The Controller shall consider the matter referred to him or her and shall make an order confirming, varying or further varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(6) An order under *subsection (5)* may be made for such period as the Controller may determine.

Application for grant of licence in connection with licensing scheme.

345.—(1) A person who claims, in a case to which a licensing scheme relates, that the operator of the scheme has refused to grant or to procure the grant to him or her of a licence in accordance with the scheme, or has failed to do so within a reasonable period, may apply to the Controller for an order under *subsection (4)*.

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

(*a*) has refused to grant or to procure the grant to him or her of a licence, or has failed to do so within a reasonable period and that in the circumstances it is unreasonable that a licence should not be granted, or

(*b*) proposes terms for a licence that are unreasonable,

may apply to the Controller for an order under *subsection (4)*.

(3) A case shall be regarded as being excluded from a licensing scheme for the purposes of *subsection (2)* where—

(*a*) the scheme provides for the grant of licences, subject to terms excepting matters from the licence and the case is 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) Where the Controller is satisfied that a claim under this section is well-founded, he or she 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 Controller may determine to be applicable in accordance with the scheme, or, as the case may be, to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Review of orders made by Controller.

346.—(1) Where the Controller has made an order under *section 345* 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 Controller for a review of that order.

(2) An application under *subsection (1)* shall not be made except with the special leave of the Controller—

(*a*) within 12 months from the date of the order or of the decision on a previous application under this section, or

(*b*) where—

(i) the order was made so as to be in force for 15 months or less, or

(ii) as a result of the decision on a previous application under this section the order is due to expire within 15 months of that decision,

until the last 3 months before the expiration date.

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

Effect of order of Controller as to licensing scheme.

347.—(1) A licensing scheme which has been confirmed or varied by the Controller under *section 342, 343* or *344* shall be in operation, or as the case may be, remain in operation, in so far as it relates to the description of case in respect of which the order was made, for such period as the order remains in force.

(2) Where an order made by the Controller under *section 342, 343* or *344* confirming or varying a licensing scheme is in force (in this section referred to as an "order to which this section applies"), 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 applying to the case concerned or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and

(*b*) complies with the other terms applicable to the licence under the scheme,

is in the same position as regards infringement of the database right as if he or she had at all material times been the holder of a licence granted by the owner of the database right concerned in accordance with the scheme.

(3) The Controller may direct that an order to which this section applies, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference was made, or where later, the date on which the scheme came into operation.

(4) Where a direction is made under *subsection (3)*—

(*a*) any necessary repayments or further payments shall be made in respect of charges already paid, and

(*b*) the reference in *subsection (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.

(5) Where the Controller has made an order under *section 345* and the order remains in force, the person in whose favour the order is made, where he or she—

(*a*) pays to the operator of the scheme any charges payable in accordance with the order, or where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and

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

is in the same position as regards infringement of the database right as if he or she had at all material times been the holder of a licence granted by the owner of the database right concerned on the terms specified in the order.

References and Applications Relating to Licensing by Licensing Bodies

General reference by licensing bodies.

348.—*Sections 349* to *352* apply to licences in relation to the database right in databases of more than one database right owner, granted by a licensing body otherwise than pursuant to a licensing scheme, in so far as the licences relate to the extraction or re-utilisation of all or a substantial part of the contents of a database.

Reference to Controller of proposed licence.

349.—(1) The terms on which a licensing body proposes to grant a licence may be referred to the Controller by the prospective licensee for an order under *subsection (3)*.

(2) The Controller may refuse to consider a reference under *subsection (1)* on the ground that the reference is premature.

(3) Where the Controller decides to consider a reference under *subsection (1)*, he or she shall consider the terms of the proposed licence and make an order, confirming or varying the terms, as the Controller may determine to be reasonable in the circumstances.

(4) An order under *subsection (3)* may be made for such period as the Controller may determine.

Reference to Controller of expiring licence.

350.—(1) A licensee under a licence which is due to expire, with the passage of time or as a result of notice given by the licensing body, may apply to the Controller on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) An application under *subsection (1)* may be made at any time during the last 3 months before the expiration of the licence.

(3) A licence in respect of which a reference has been made to the Controller under *subsection (1)* shall remain in force until proceedings in relation to the reference are concluded.

(4) Where the Controller is satisfied that an application made under *subsection (1)* is well-founded, he or she shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Controller may determine to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Application for review of order made by Controller.

351.—(1) Where the Controller has made an order under *section 349* or *350*, the licensing body or the person entitled to the benefit of the order may apply to the Controller for a review of that order.

(2) An application under *subsection (1)* shall not be made except with the special leave of the Controller—

(*a*) within 12 months from the date of the order or of the decision on a previous application under this section, or

(*b*) where—

(i) the order was made so as to be in force for 15 months or less, or

(ii) as a result of the decision on a previous application under this section the order is due to expire within 15 months of that decision,

until the last 3 months before the expiration date.

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

Effect of order of Controller as to licence.

352.—(1) Where the Controller has made an order under *section 349* or *350*, and the order remains in force, the person entitled to the benefit of the order, where he or she—

(*a*) pays to the licensing body any charges payable in accordance with the order or, where the amount cannot be ascertained, gives an undertaking to the Controller to pay the charges when ascertained, and

(*b*) complies with the other terms specified in the order.

is in the same position as regards infringement of the database right as if he or she had at all material times been the holder of a licence granted by the owner of the database right concerned on the terms specified in the order.

(2) The benefit of an order made under *section 349* or *350* may be assigned—

(*a*) in the case of an order made under *section 349*, where assignment is not prohibited under the terms of the order of the Controller, and

(*b*) in the case of an order made under *section 350*, where assignment was not prohibited under the terms of the original licence.

(3) The Controller may direct that an order made under *section 349* or *350* or an order made under *section 351* varying such an order, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference or application was made or, where later, the date on which the licence was granted or, as the case may be, was due to expire.

(4) Where a direction is given under *subsection (3)*—

(*a*) any necessary repayments, or further payments, shall be made in respect of charges already paid, and

(*b*) the reference in *subsection (1)(a)* to the charges payable in accordance with the order shall be construed, where the order is varied by a further order, as a reference to the charges so payable by virtue of that further order.

Licensing: Miscellaneous

General considerations: unreasonable discrimination.

353.—(1) In determining what is reasonable, on a reference or application under this Chapter relating to a licensing scheme or licence, the Controller 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 his or her powers so as to ensure 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.

(2) *Subsection (1)* shall not affect the obligation of the Controller in any case to have regard to all relevant circumstances.

Licences to reflect payments in respect of underlying rights.

354.—Where a reference or application is made under this Chapter in relation to licensing in respect of the database right in a database, the Controller shall take into account, in considering what charges are to be paid for a licence, any payments which the owner of the database right is liable to make pursuant to the granting of the licence, or pursuant to the acts authorised by the licence—

(*a*) to owners of the copyright in works included in the database, or

(*b*) in respect of any performance included in the database.

CHAPTER 12

Registration of Licensing Bodies in Respect of Database Right

Register of licensing bodies for database right.

355.—(1) The Controller shall establish and maintain a register of licensing bodies in respect of database rights in such form and manner and containing such particulars as the Minister may prescribe to be known as the "Register of Licensing Bodies for Database Rights" and referred to in this Part as the "Register".

(2) The Controller shall keep the Register in such form that the Register is capable of being used to make a copy of any entry in the Register.

(3) The Register shall be kept at such place as may be prescribed by the Minister and, subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance—

(*a*) the Register shall be made available for inspection by a person at such times and in such manner as may be prescribed by the Minister, and

(*b*) where a request is made to the Controller for a certified or uncertified copy of, or extract from, an entry in the Register, the Controller shall issue a copy of the entry or extract to the applicant.

(4) An application for registration or renewal of a registration of a licensing body shall be made to the Controller in such form and manner as may be prescribed by the Minister and shall be subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance.

(5) The Controller shall register an applicant or renew a registration where the Controller is satisfied that—

(*a*) the applicant complies with the definition of a licensing body specified in *section 340*, and

(*b*) the applicant has provided such information and satisfied such conditions as may be prescribed by the Minister for the purposes of registration.

(6) The information to be prescribed by the Minister under *subsection (5)(b)* shall include the following:

(*a*) the name of the applicant;

(*b*) the address of the applicant;

(*c*) the names of the chairperson and other members of the board or officers, or names of partners, as the case may be, of the applicant;

(*d*) a copy of the memorandum and articles of association or partnership agreement, of the applicant;

(*e*) details of the scheme;

(*f*) details of the scales of charges or proposed charges to be levied by the applicant; and

(*g*) the class of rightsowners represented or proposed to be represented by the applicant.

(7) On the registration or renewal of a registration of a licensing body the Controller shall issue to the applicant a certificate of registration in such form as the Controller shall determine.

Proof that licensing body may act on behalf of specified classes.

356.—A certificate granted under *section 355(7)* shall include the particulars specified in *subsection (6)* of that section and the certificate shall be evidence of the right of the licensing body, until the contrary is proved, to act on behalf of the classes of rightsowners for whom it claims representation rights or on behalf of the rightsowners who have assigned rights to it, or exclusively licensed it, as specified in that certificate.

Notification of charges.

357.—(1) A licensing body registered under this Part which proposes to impose a charge, otherwise than in accordance with the scales of charges included in an application for registration or for renewal of a registration, shall provide the Controller in writing with details of the proposed charge not less than one month before the charge comes into effect.

(2) The registration of a licensing body which fails to comply with *subsection (1)* is deemed to be cancelled from the date on which the proposed charge comes into effect.

Validity of certificates of registration.

358.—(1) A certificate of registration issued under *section 355(7)* shall be valid for a period of 12 months from the date of registration or such lesser period as may be specified by the Controller in the certificate.

(2) Subject to *section 355(4)*, a licensing body registered under this Part may apply for renewal of its registration for further periods each of which shall not exceed 12 months.

(3) An application for renewal of a registration shall be made not less than one month before the expiration of the period of validity of the certificate of registration.

(4) A term of renewal of a registration shall take effect from the expiration of the previous registration.

Refusal of application.

359.—(1) The Controller may refuse an application for renewal of a registration by a licensing body registered under this Part or cancel the registration of a licensing body where the body no longer fulfils the requirements specified in *section 355(5)*.

(2) The Controller shall remove a licensing body from the Register where its application for renewal of its registration is refused or its registration is cancelled.

Indemnity for Controller.

360.—No action or other proceedings shall lie or be maintainable against the Controller (except in the case of wilful neglect of duty) in respect of anything done or omitted to be done by him or her in the *bona fide* exercise of any functions, powers or duties conferred or imposed by or under this Chapter.

Obligation of collecting societies to register (database rights).

361.—(1) Any body operating as a licensing body within the meaning specified in *section 340* shall be obliged to register in accordance with the provisions of this Chapter, and to remain registered for so long as it continues to operate in this capacity.

(2) Any body to which the provisions of *subsection (1)* applies which—

(*a*) fails within 6 months of the commencement of this Chapter to register under the terms of this Chapter,

(*b*) fails within 2 months of its establishment in the case of a body established after the commencement of this Chapter to register under the terms of this Chapter, or

(*c*) continues to operate as such a body having been removed from the Register for any reason,

shall be guilty of an offence.

(3) A person guilty of an offence under *subsection (2)* shall be liable—

(*a*) on summary conviction, to a F166**[**class C fine**]**, or to imprisonment for a term not exceeding 12 months, or both, or

(*b*) on conviction on indictment, to a fine not exceeding F166**[**€130,000**]**, or to imprisonment for a term not exceeding 5 years, or both.

PART VI

JURISDICTION OF CONTROLLER

Jurisdiction of Controller

362.—It shall be a function of the Controller pursuant to references or applications under this Act to determine, within a reasonable period of time, disputes arising under this Act between licensing bodies and persons requiring licences or organisations claiming to be representative of those persons.

Rules in relation to proceedings before Controller.

363.—(1) The Minister may make rules in relation to proceedings before the Controller under this Act and, subject to the consent of the Minister for Finance, may also make rules in relation to the fees chargeable in respect of such proceedings.

(2) Rules made under this section shall—

(*a*) specify the parties to proceedings and permit the Controller to make a party to the proceedings a person or organisation satisfying the Controller that the party concerned has a substantial interest in the matter, and

(*b*) require the Controller to give the parties to proceedings an opportunity to state their case orally or in writing.

(3) Without prejudice to the generality of *subsection (1)*, rules made under this section may make provision for prescribing matters incidental to or consequential upon appeals from decisions of the Controller under *section 366*.

Power of Controller to award costs.

364.—(1) The Controller may order that the costs of a party to proceedings before him or her under this Act, including costs associated with the appointment of an arbitrator under *section 367* and costs of a party to proceedings before that arbitrator, shall be paid by such party as the Controller may direct, and the Controller may determine the amounts of the costs or direct the manner in which they are to be paid.

(2) A copy of an order made by the Controller under *subsection (1)* which is certified by the Controller to be a true copy shall, in proceedings under this Act, be evidence of the order unless the contrary is proved.

F167**[**Costs of Controller in proceedings.

364A.—In any proceedings before any court under this Act, the Controller shall not be awarded or be ordered to pay costs.**]**

Appointment of assessors.

365.—(1) In any proceedings before him or her under this Act, the Controller may, where he or she thinks fit, and shall, on the request of all the parties to the proceedings, appoint an assessor who is specially qualified in regard to all or any of the questions arising in the course of the proceedings to aid the Controller in his or her consideration of those questions.

(2) Subject to *subsection (3)*, the Minister shall approve, with the consent of the Minister for Finance, the amount of remuneration (if any) to be paid by the Controller to an assessor appointed by him or her under this section.

(3) The amount of remuneration referred to under *subsection (2)* shall be paid out of moneys provided by the Oireachtas, to such an extent as may be sanctioned by the Minister for Finance.

Appeal to the High Court.

366.—(1) An appeal on a point of law arising from a decision of the Controller under this Act shall lie to the High Court.

(2) Provision shall be made in the rules made under *section 363* limiting the time within which such an appeal may be brought.

(3) Provisions may be made in the rules made under *section 363* for all or any of the following, namely:

(*a*) suspending, authorising or requiring the Controller to suspend the operation of orders of the Controller in cases where his or her decision is appealed;

(*b*) modifying, in relation to an order of the Controller the operation of which is suspended, the operation of any provision of this Act as to the effect of that order;

(*c*) the notification of, or the taking of other steps for securing that, persons affected by the suspension of an order of the Controller shall be informed of its suspension.

(4) Subject to *subsection (5)*, a decision of the High Court under this section shall be final and may not be appealed.

(5) By leave of the High Court, an appeal from a decision of the High Court under this section shall lie to the Supreme Court on a question of law.

References of dispute to arbitrator.

367.—(1) In the case of a dispute referred to the Controller under this Act, the Controller may at any time—

(*a*) where the parties to the dispute consent, or

(*b*) where a matter requires any prolonged examination of documents or other investigation requiring specialist knowledge which could not be made by him or her,

order the matter to be referred to an arbitrator agreed by the parties or, in the absence of such agreement, appointed by the Controller.

(2) F168**[**...**]**

(3) The arbitrator shall make his or her award within 3 months of the reference from the Controller, or within such further period of time as may be agreed with the Controller.

(4) The award made by an arbitrator in a case referred to him or her under this section shall, where the parties consent to the reference, be final and binding on the parties.

(5) An appeal from an award made by an arbitrator pursuant to a reference under this section to which the parties to the dispute did not consent shall lie to the High Court and the High Court may make such order confirming, annulling or varying the award of the arbitrator as it thinks fit.

(6) Subject to *subsection (7)*, a decision of the High Court under this section shall be final and may not be appealed.

(7) By leave of the High Court, an appeal from a decision of the High Court under this section shall lie to the Supreme Court on a question of law.

(8) In any reference to an arbitrator under this section, the Controller on giving notice to the parties to the dispute shall have the same power toF169**[**request the court under section 9 of the Arbitration Act 2010 to decide on the termination of the mandate of that arbitrator**]** as if he or she had been a party to the arbitration.

(9) Nothing in *subsection (8)* shall affect the rights of the parties to the arbitration.

(10) For the avoidance of doubt, in the event of an arbitrator being removed under *subsection (8)*, a second or subsequent arbitrator may be appointed to arbitrate the dispute in accordance with this section.

Controller may consult Attorney General.

368.—The Controller may, in any case of doubt or difficulty arising in connection with the administration of any of the provisions of this Act, apply to the Attorney General for advice in the matter.

Definition of dispute for the purposes of this Chapter.

369.—For the purposes of this Chapter, "dispute" shall include any matter referred to the Controller for decision or resolution by reference or application under any provision of this Act.

PART VII

TECHNOLOGICAL PROTECTION MEASURES

CHAPTER 1

Rights Protection Measures

Devices designed to circumvent protection.

370.—(1) This section applies where, by or with the licence of the rightsowner—

(*a*) copies of copyright works to which rights protection measures have been applied or recordings of performances to which rights protection measures have been applied, are made available to the public, or

(*b*) copies of databases to which rights protection measures have been applied, are re-utilised.

F170**[**(2) A person who lawfully makes available to the public or re-utilises the copies referred to in *subsection (1)* has the same rights and remedies as the rightsowner has in respect of an infringement of any of his or her rights under this Act against a person who—

(*a*) (i) makes,

(ii) sells, rents or lends, or offers or exposes for sale, rental or loan,

(iii) imports into the State, or

(iv) has in his or her possession, custody or control,

a protection-defeating device, knowing or having reason to believe that it has been or is to be used to circumvent rights protection measures,

(*b*) provides information, or offers or performs any service, intended to enable or assist persons to circumvent rights protection measures, or

(*c*) circumvents rights protection measures in a work otherwise than with the agreement of the rightsowner or pursuant to *section 374*.**]**

(3) The presumptions as to ownership of rights specified in *Chapter 12* of *Part II* and *Chapter 10* of *Part V* shall apply in any proceedings under this section, whether civil or criminal, as in proceedings for infringement of the copyright in a work or for infringement of the database right in a database under *Part II* or *Part V*.

(4) *Sections 145* and *264* shall apply with any necessary modifications in relation to the disposal of anything delivered up or seized by virtue of *subsection (2)*.

(5) References in this Part to copies of a work, recording or database shall include the original.

Offence of unlawful reception.

371.—A person who receives a broadcast or cable programme to which rights protection measures have been applied, knowing or having reason to believe that it is being received unlawfully with the intent to avoid payment of any charge applied by the rightsowner for the reception of that broadcast or cable programme shall be guilty of an offence and shall be liable on summary conviction to a F171**[**class C fine**]**.

Rights in respect of apparatus, etc., for unauthorised reception of transmissions.

372.—(1) A person who is authorised by the rightsowner—

(*a*) to make charges for the reception of programmes included in a broadcast or cable programme service, or

(*b*) to send encrypted transmissions of any other description,

has the same rights and remedies against a person who—

(i) (I) makes,

(II) sells, rents or lends, or offers or exposes for sale, rental or loan,

(III) imports into the State, or

(IV) has in his or her possession, custody or control,

any apparatus or protection-defeating device, knowing or having reason to believe that the apparatus or device is to be used to enable or assist persons to receive those programmes or transmissions when those persons are not so entitled, or

(ii) provides information, or offers or performs any service, intended to enable or assist persons to receive those programmes or transmissions when those persons are not so entitled,

as a rightsowner has in respect of an infringement of any of his or her rights under this Act.

(2) Without prejudice to any other remedy, in cases of innocent infringement of the rights conferred by *subsection (1)*, the appropriate court may award damages as it considers appropriate in the circumstances, and such damages shall not exceed a reasonable payment in respect of the act complained of.

(3) *Sections 145* and *264* shall apply with any necessary modifications in relation to the disposal of anything delivered up or seized by virtue of *subsection (1)*.

Denial of protection.

373.—(1) Where it appears to the Minister that broadcasts made, or cable programmes or encrypted transmissions sent, from the State are not adequately protected in a country, territory, state or area, the Minister may by order restrict the rights conferred by *section 370, 371* or *372* in relation to broadcasters or providers of cable programme services or encrypted transmissions connected with that country, territory, state or area.

(2) In an order made under *subsection (1)* the Minister shall designate the country, territory, state or area concerned and provide that, for the purposes specified in that order, a broadcast made or a cable programme or encrypted transmission sent after a date specified in that order shall not qualify for the protection conferred by *section 370, 371* or *372* where at the time of that making or sending the maker or sender is—

(*a*) an individual domiciled or resident in that country, territory, state or area (and not at the same time domiciled or resident in the State),

(*b*) a body incorporated under the law of that country, territory, state or area,

(*c*) a partnership or unincorporated body formed under the law of that country, territory, state or area, or

(*d*) any other body,

and the order may make such provision for all the purposes of *section 370*, *371* or *372* or for such purposes as are specified in that order.

Non-interference of rights protection measures with permitted acts.

F172**[374.**—(1) Nothing in this Chapter shall be construed as operating to prevent any person from undertaking any act permitted (in this section referred as "the permitted act")—

(*a*) in relation to works protected by copyright under *Chapter 6* of *Part II*, by that *Chapter 6*,

(*b*) in relation to performances, by *Chapter 4* of *Part III*, or

(*c*) in relation to databases, by *Chapter 8* of *Part V*.

(2) Where the beneficiary is legally entitled to access the protected work or subject-matter concerned, the rightsowner or licensee shall make available to the beneficiary the means of benefiting from the permitted act, save where other copies of such work or other subject-matter have been made available to the public on reasonable and agreed contractual terms by, or with the authority of, the rightsowner, in a form which does not prevent or unreasonably restrict the beneficiary from undertaking the permitted act.

(3) Where a technological protection measure has prevented a person (in this section referred to as "the complainant") from undertaking in respect of a work the permitted act, the complainant may request the owner or licensee of the rights in that work (in this section referred to as "the respondent") to provide an effective means of carrying out that act.

(4) Where, within a period of 30 working days from the date of the request, the respondent declines or fails to provide such an effective means of allowing the complainant to undertake in respect of the work the permitted act, the complainant may apply to the appropriate court for an order directing the permitted act.**]**

CHAPTER 2

Rights Management Information

Rights and remedies in respect of unlawful acts which interfere with rights management information.

375.—F173**[**(1)(*a*) The rightsowner or exclusive licensee has the same rights in respect of an infringement of copyright or related rights notwithstanding that he or she is not the person issuing to the public copies of, or communicating, the work to the public.

(*b*) A person lawfully issuing to the public copies of, or lawfully communicating to the public, the work has the same rights as the rightsowner has in respect of an infringement of copyright.**]**

(2) References in this section to rights management information include information, or any representation thereof—

(*a*) which identifies a copyright work, recording of a performance or database,

(*b*) which identifies the author in relation to a copyright work, the performer in relation to a recording of a performance or the maker in respect of a database,

(*c*) which identifies the owner of any right in a copyright work, recording of a performance or database, or

(*d*) about the terms and conditions of use of a copyright work, recording of a performance or database,

where any of these items of information, or any representations thereof, are attached to F173**[**, embedded in, or appear in connection with, or are otherwise associated with or incorporated in,**]** with a copy of a copyright work or a copy of a recording of a performance, which is lawfully made available to the public, or a copy of a database which is lawfully re-utilised.

(3) *Sections 145* and *264* shall apply with any necessary modifications in relation to the disposal of anything delivered up or seized by virtue of *subsection (1)*.

Removal or interference with rights management information.

376.—(1) A person who—

(*a*) removes or alters rights management information from copies of copyright works, copies of recordings of performances or copies of databases knowing or having reason to believe that the primary purpose or effect of such removal or alteration is to F174**[**commit,**]** induce, enable, facilitate or conceal an infringement of any right conferred by this Act,

(*b*) makes available to the public copies of copyright works or copies of recordings of performances or re-utilises copies of databases, referred to in *paragraph (a)*, knowing or having reason to believe that rights management information has been removed or altered from those copies, or

(*c*) (i) sells, rents or lends, or offers or exposes for sale, rental or loan,

(ii) imports into the State, or

(iii) in the course of a business, trade or profession, has in his or her possession, custody or control,

copies of copyright works, copies of recordings of performances or copies of databases, referred to in *paragraph (a)*, knowing or having reason to believe that rights management information has been removed or altered from those copies,

shall be guilty of an offence.

(2) A person guilty of an offence under *subsection (1)* shall be liable—

(*a*) on summary conviction to a F175**[**class C fine**]** in respect of each copy, or to imprisonment for a term not exceeding 12 months, or both, or

(*b*) on conviction on indictment to a fine not exceeding F175**[**€130,000 **]**, or imprisonment for a term not exceeding 5 years, or both.

F176**[**Certain acts infringe rights of rightsowner of rights management information

377.—It is an infringement of the rights of the rightsowner of rights management information for a person to—

(*a*) remove or alter that information from copies of copyright works, copies of recordings of performances or copies of databases knowing or having reason to believe that the primary purpose or effect of such removal or alteration is to commit, induce, enable, facilitate or conceal an infringement of any right conferred by this Act,

(*b*) make available to the public copies of copyright works or copies of recordings of performances or re-utilise copies of databases, referred to in *paragraph (a)*, knowing or having reason to believe that rights management information has been removed or altered from those copies, or

(*c*) (i) sell, rent or lend, or offer or expose for sale, rental or loan,

(ii) import into the State, or

(iii) in the course of a business, trade or profession, have in his or her possession, custody or control,

copies of copyright works, copies of recordings of performances or copies of databases, referred to in *paragraph (a)*, knowing or having reason to believe that rights management information has been removed or altered from those copies.**]**

SCHEDULES TO THE COPYRIGHT AND RELATED RIGHTS ACT, 2000

FIRST SCHEDULE

PART I

TRANSITIONAL PROVISIONS AND SAVINGS: COPYRIGHT

PART II

WORKS MADE BEFORE THE FIRST DAY OF JULY, 1912

PART III

SECONDARY INFRINGEMENTS

PART IV

PERFORMERS' RIGHTS

PART V

COPYRIGHT AND PERFORMERS' RIGHTS

PART VI

TRANSITIONAL PROVISIONS AND SAVINGS: DATABASES

SECOND SCHEDULE

PART I

PART II

THIRD SCHEDULE

Section 10

FIRST SCHEDULE

PART I

Transitional Provisions and Savings: Copyright

1. (1) In this Schedule—

"Act of 1911" means the Copyright Act, 1911;

"Act of 1927" means the Industrial and Commercial Property (Protection) Act, 1927;

"Act of 1963" means the Copyright Act, 1963;

"new copyright provisions" means the provisions of this Act relating to copyright;

"new right" means a right arising by virtue of this Act other than—

(*a*) a right corresponding to a right which existed immediately before the commencement of *Part III* of this Act, or

(*b*) a right to remuneration arising under this Act.

(2) References in this Schedule to "commencement" shall be construed as references to the date on which the provision concerned came into operation.

(3) References in this Schedule to "existing work" shall be construed as references to a work made before the commencement of *Part II* of this Act and for this purpose a work the making of which extends over a period of time shall be deemed to have been made when the work is completed.

(4) In relation to the Act of 1963, references in this Schedule to a work include any work within the meaning of that Act.

(5) In relation to the Act of 1927—

(*a*) a reference in *Part I* of this Schedule to copyright includes the right conferred by that Act in substitution for a right subsisting immediately before the commencement of that Act;

(*b*) a reference in *Part I* of this Schedule to copyright in a sound recording is a reference to the copyright under that Act in a record embodying the recording; and

(*c*) a reference in *Part I* of this Schedule to copyright in a film is a reference to any copyright under that Act in the film (in so far as the film constituted a dramatic work for the purposes of that Act) or in photographs forming part of that film.

2. Subject to any express provisions to the contrary, the new copyright provisions shall apply in relation to works existing on the commencement of *Part II* of this Act as they apply in relation to works coming into existence after such commencement.

3. (1) A reference in an enactment or other document to copyright, or to a work in which copyright subsists, which apart from this Act would be construed as referring to copyright under the Act of 1963 shall be construed, in so far as may be required for continuing its effect, as being, or as the case may require, including, a reference to copyright under this Act or to works in which copyright subsists under this Act.

(2) Subject to any express provisions to the contrary, anything done, or having effect as being done, under or for the purposes of a provision repealed by this Act has effect as if done under or for the purposes of the corresponding provision of the new copyright provisions.

(3) References (expressed or implied) in this Act or any other enactment or other document to any of the new copyright provisions shall, in so far as the context permits, be construed as including, in relation to times, circumstances and purposes before commencement of *Part I* or *II* of this Act, a reference to corresponding provisions in operation at the time of the commencement of *Part I* or *II* of this Act.

(4) Subject to any express provision to the contrary, a reference (express or implied) in an enactment or other document to a provision repealed by this Act shall be construed, in so far as may be required for continuing its effect, as a reference to the corresponding provision of this Act in so far as there are corresponding provisions.

(5) Notwithstanding the repeal of the Act of 1963, any regulation, rule or order made under the Act of 1963 and which is in force immediately before the commencement of *Part II* of this Act shall continue in force and be deemed after the commencement of the said *Part II* to be made under the corresponding provisions of this Act.

(6) Notwithstanding the repeal of the Act of 1963, any proceedings initiated or criminal prosecutions instituted under that Act may continue and shall be determined as if the Act of 1963 had not been repealed and any order made or fine or penalty imposed shall have effect accordingly.

(7) Except as otherwise expressly provided, any agreement made prior to the coming into operation of that Part of this Act which relates to the subject matter of the agreement shall be construed by reference to the law existing at the time the agreement was made and it shall not be construed as conferring any rights on any party which were not then in existence except in cases where the parties had expressly agreed that its terms would apply to new rights arising from future legislation.

4. Copyright subsists in an existing work after the commencement of *Part II* of this Act where copyright subsisted in the work concerned immediately before such commencement.

5. (1) Copyright shall not subsist in a film, as such, made before the first day of October, 1964.

(2) Where a film made before the date referred to in *subparagraph (1)* was an original dramatic work for the purposes of the Act of 1927, the new copyright provisions shall have effect in relation to the film as if it was an original dramatic work within the meaning of *Part II* of this Act.

(3) The new copyright provisions apply in relation to photographs forming part of a film made before the first day of October, 1964, as they apply in relation to photographs not forming part of a film.

6. (1) A film sound-track to which section 18(8) of the Act of 1963 applied before the commencement of *Part II* of this Act shall be deemed for the purposes of the new copyright provisions to be a sound recording.

(2) Copyright subsists in a sound recording where copyright subsisted in the film immediately before the commencement of *Part II* of this Act and it continues to subsist until copyright in the film expires.

(3) The author and first owner of copyright in the film shall be deemed to be the author and first owner of the copyright in the sound recording.

(4) Anything done before the commencement of *Part II* of this Act under or in relation to the copyright in the film continues to apply in relation to the sound recording as in relation to the film.

7. The question as to who was the author of an existing work shall be determined in accordance with the new copyright provisions for the purposes of the rights conferred by *Chapter 7* of *Part II* of this Act, and for all other purposes shall be determined in accordance with the law applicable at the time the work was made.

8. (1) The question as to who is or was the first owner of copyright in an existing work shall be determined in accordance with the law applicable to copyright at the time the work was made.

(2) Where, before the commencement of *Part II* of this Act, a person commissioned the making of a work in circumstances within—

(*a*) section 10(3) of the Act of 1963 or paragraph (*a*) of the proviso to section 158(1) of the Act of 1927, or

(*b*) the proviso to section 17(3) of the Act of 1963,

those provisions shall apply in order to determine first ownership of copyright in any work made pursuant to the commission after the commencement of the said *Part II*.

9. (1) Nothing in this Act shall affect the duration of copyright in works F177**[**which have been made available to the public and**]** in which copyright subsists on or before the commencement of *Part II* of this Act, and the duration of copyright in those works shall be determined, where applicable, in accordance with the European Communities (Term of Protection of Copyright) Regulations, 1995 (S.I. No. 158 of 1995), notwithstanding the revocation of those Regulations.

(2) This Act shall apply to computer programs whether created before or after the first day of January, 1993.

10. Section 13 of the Act of 1963 continues to apply where notice under that section was given before the repeal of that section by this Act, but only in respect of the making of records—

(*a*) within one year of the repeal of the Act of 1963 coming into operation, and

(*b*) up to the number stated in the notice as intended to be sold.

11. (1) Any act undertaken before the commencement of *Chapter 7* of *Part II* of this Act shall not be actionable under any provision of that Chapter.

(2) Section 54 of the Act of 1963 continues to apply in relation to acts undertaken before the commencement of *Chapter 7* of *Part II* of this Act.

12. (1) The rights conferred by *sections 107* and *109* shall not apply—

(*a*) in relation to a literary, dramatic, musical or artistic work the author of which died before the commencement of *Part II* of this Act, or

(*b*) in relation to a film, broadcast or typographical arrangement made before the commencement of *Part II* of this Act.

(2) The rights conferred by *sections 107* and *109* in relation to an existing literary, dramatic, musical or artistic work shall not apply—

(*a*) where copyright first vested in the author, to anything which by virtue of an assignment of copyright made or licence granted before the commencement of *Part II* of this Act may be done without infringing copyright,

(*b*) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.

(3) *Chapter 7* of *Part II* of this Act shall not apply to anything done in relation to a record made pursuant to section 13 of the Act of 1963.

13. The right conferred by *section 114* shall not apply to photographs taken or films made before the commencement of *Part II* of this Act.

14. (1) Any document made or event occurring before the commencement of *Part II* of this Act which operated—

(*a*) to affect the ownership of the copyright in an existing work, or

(*b*) to create, transfer or terminate an interest, right or licence in respect of the copyright in an existing work,

has the corresponding operation in relation to copyright in the existing work under this Act.

(2) A word or phrase in a document referred to in *subparagraph (1)* shall be construed in accordance with its effect immediately before the commencement of *Part II* of this Act.

15. *Section 121* shall not apply in relation to an agreement made before the first day of October, 1964, in relation to copyright.

16. (1) Where the author of a literary, dramatic, musical or artistic work was the first owner of the copyright in the work, an assignment of the copyright and a grant of any interest in it, made by him or her (otherwise than by will) after the passing of the Act of 1927 and before the first day of October, 1964, shall not operate to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years after the death of the author.

(2) The reversionary interest in the copyright expectant on the expiration of the period referred to in *subparagraph (1)* may, after the commencement of *Part II* of this Act, be assigned by the author during his or her life but in the absence of any assignment shall, on his or her death, devolve on his or her legal personal representatives as part of his or her estate.

(3) Nothing in this paragraph affects—

(*a*) an assignment of the reversionary interest by a person to whom it has been assigned,

(*b*) an assignment of the reversionary interest after the death of the author by his or her personal representatives or any person becoming entitled to it, or

(*c*) any assignment of the copyright after the reversionary interest has fallen in.

(4) This paragraph shall not apply to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(5) In *subparagraph (4)* "collective work" means—

(*a*) any encyclopaedia, dictionary, yearbook, or similar work,

(*b*) a newspaper or periodical, or

(*c*) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

PART II

Works made before the first day of July, 1912

17. (1) *Paragraphs 17* to *30* and *44* of this Schedule apply to works made before the first day of July, 1912.

(2) In *paragraphs 17* to *30* and *44* of this Schedule a "right conferred by the Act of 1911", in relation to a work, means such a substituted right as, by virtue of section 24 of the Act of 1911, was conferred in place of a right subsisting immediately before the commencement of that Act.

18. Notwithstanding anything in *paragraphs 17* to *30* and *44* of this Schedule, neither subsection (1) or (2) of section 8 of the Act of 1963, nor subsection (2) or (3) of section 9 of that Act, shall apply to a work to which this Part of the Schedule applies, unless a right conferred by the Act of 1911 subsisted in the work immediately before the commencement of the said section 8 or 9, as the case may be.

19. (1) Where, in the case of a dramatic or musical work made before the first day of July, 1912, the right conferred by the Act of 1911 did not include the sole right to perform the work in public, then, in so far as copyright subsists in the work by virtue of this Act, the acts restricted by the copyright shall be treated as not including those specified in *subparagraph (3)*.

(2) Where, in the case of a dramatic or musical work to which *paragraphs 17* to *30* and *44* of this Schedule apply, the right conferred by the Act of 1911 consisted only of the sole right to perform the work in public, then, in so far as copyright subsists in the work by virtue of this Act, the acts restricted by the copyright shall be treated as consisting only of those specified in *subparagraph (3)*.

(3) The acts referred to in *subparagraphs (1)* and *(2)* are—

(*a*) performing the work or an adaptation thereof in public,

(*b*) broadcasting the work or an adaptation thereof, or

(*c*) causing the work or an adaptation thereof to be transmitted to subscribers to a diffusion service.

20. Where a work to which *paragraphs 17* to *30* and *44* apply consists of an essay, article or extract forming part of a work and first published in a review, or other periodical or similar work, and immediately before the commencement of section 8 of the Act of 1963, a right of publishing the work in a separate form subsisted by virtue of the note appended to the First Schedule to the Act of 1911, that note shall have effect, in relation to that work, as if it had been re-enacted in this Act with the substitution, where it first occurs for "right" of "copyright".

21. (1) This paragraph shall apply where—

(*a*) the author of a work to which *paragraphs 17* to *30* and *44* of this Schedule apply had, before the commencement of the Act of 1911, made such an assignment or grant as is mentioned in paragraph (*a*) of the proviso to subsection (1) of section 24 of that Act, and

(*b*) copyright subsists in the work by virtue of any provision of this Act.

(2) Where, before the commencement of section 24 of the Act of 1911, an event occurred, or notice was given, which in accordance with paragraph (*a*) of the proviso referred to in *subparagraph (1)(a)* operated so as to affect the ownership of the right conferred by the Act of 1911 in relation to the work, or creating, transferring or terminating an interest, right or licence in respect of that right, that event or notice shall have the corresponding operation in relation to the copyright in the work under this Act.

(3) Any right which, at a time after the commencement of a provision of this Act by virtue of which copyright subsists in a work, which would, but for the passing of this Act, by virtue of paragraph (*a*) of the proviso referred to in *subparagraph (1)(a)*, have been exercisable in relation to the work, or to the right conferred by the Act of 1911, shall be exercisable in relation to the work or to the copyright in that work under this Act, as the case may be.

(4) If, in accordance with paragraph (*a*) of the proviso referred to in *subparagraph (1)(a)*, the right conferred by the Act of 1911 would have reverted to the author or his or her personal representatives on the date referred to in that paragraph, and the said date is after the commencement of *section 17*—

(*a*) the copyright in the work under this Act shall revert to the author or his or her personal representatives, as the case may be, and

(*b*) any interest of any other person in that copyright which subsists on that date by virtue of any document made before the commencement of the Act of 1911 shall thereupon determine.

22. (1) *Section 123*—

(*a*) shall not apply where the testator died before the first day of October, 1964, and

(*b*) applies only in relation to an original document embodying a work, where the testator died on or after that date and before the commencement of *Part II* of this Act.

(2) In the case of an author who died before the first day of October, 1964, the ownership after his or her death of his or her manuscript, where such ownership has been acquired under a testamentary disposition made by him or her and the manuscript is of a work which has not been published or performed in public, is *prima facie* proof of the copyright being with the owner of the manuscript.

23. (1) *Sections 127* and *128* shall apply only in relation to an infringement of copyright committed after the commencement of *Part II* of this Act; section 22 of the Act of 1963 shall continue to apply in relation to infringements committed before such commencement.

(2) *Sections 131* to *133* shall apply to infringing copies, articles and devices made before or after the commencement of *Part II* of this Act; section 24 of the Act of 1963 shall not apply after such commencement except for the purposes of proceedings initiated before such commencement.

(3) *Sections 135* and *136* shall apply only in relation to an infringement of copyright committed after the commencement of *Part II* of this Act; section 25 of the Act of 1963 shall continue to apply in relation to infringements committed before such commencement.

(4) *Section 139* shall apply only in proceedings brought by virtue of this Act; section 26 of the Act of 1963 shall continue to apply in proceedings brought by virtue of that Act.

24. *Sections 135* and *136* shall not apply to a licence granted before the first day of October, 1964.

25. (1) *Section 140* shall apply only in relation to acts undertaken after the commencement of *Part II* of this Act; section 27 of the Act of 1963 shall continue to apply in relation to acts undertaken before such commencement.

(2) *Section 143* shall apply in relation to offences committed before the commencement of *Part II* of this Act in relation to which the Act of 1963 applied; section 27(5) of the Act of 1963 shall continue to apply in relation to warrants issued before such commencement.

26. A dispute referred to the Controller under Part V of the Act of 1963 and pending at the time of the commencement of *Part II* of this Act shall be disposed of under the said Part V of the Act of 1963 as if that Part had not been repealed.

27. Every work in which copyright subsisted under the Act of 1963 immediately before the commencement of *Part II* of this Act shall be deemed to satisfy the requirements of this Act as to qualification for copyright protection.

28. (1) *Section 191* shall apply to an existing work where—

(*a*) section 51 of the Act of 1963 applied to the work immediately before commencement, and

(*b*) the work is not one to which *section 193, 194* or *195* applies.

(2) *Section 191(2)* shall have effect subject to any agreement entered into under section 51(6) of the Act of 1963 where that agreement is entered into before the commencement of *Part II* of this Act.

29. (1) *Section 193* of this Act shall apply to existing unpublished literary, dramatic, musical or artistic works, but shall not otherwise apply to existing works.

(2) *Section 194* shall not apply to any Bill introduced into either House of the Oireachtas before the commencement of *Part II* of this Act.

30. (1) Any work in which, immediately before the commencement of *Part II* of this Act, copyright subsisted by virtue of section 44 of the Act of 1963 shall be deemed to satisfy the requirements of *section 196(1);* but otherwise *section 196(1)* shall not apply to works made or, as the case may be, published before such commencement.

(2) Copyright in a work referred to in *subparagraph (1)* which is unpublished continues to subsist until the date on which it would have expired in accordance with the Act of 1963, or the expiration of the period of 50 years from the end of the calendar year in which the new copyright provisions are commenced, whichever is the earlier.

PART III

Secondary Infringements

31. (1) *Sections 44* to *48* shall apply to secondary infringements occurring on or after the commencement of those sections.

(2) Notwithstanding the repeal of section 11 of the Act of 1963, that section shall continue to apply in respect of infringements occurring before the commencement of *sections 44* to *48*.

PART IV

Performers' Rights

32. In this Part—

"existing" in relation to a performance, means a performance given before the commencement of this Part of the Schedule.

33. Notwithstanding the repeal of the Performers' Protection Act, 1968, any proceedings initiated or criminal prosecutions instituted under that Act may continue and shall be determined as if that Act had not been repealed and any order made or fine or penalty imposed shall have effect accordingly.

34. For the purposes of this Part of this Schedule a performance, the making of which extended over a period of time, shall be taken to have been made when the performance was completed.

35. An act undertaken before the commencement of *Part III* or *Part IV* of this Act shall not be regarded as an infringement of any new right, or as giving rise to any right to remuneration arising by virtue of *Part III* or *Part IV* of this Act.

36. (1) Any new right conferred by *Part III* or *Part IV* of this Act in relation to a qualifying performance is exercisable after the commencement of the said *Part III* and *Part IV* by the performer or, where he or she has died, by the person who under *section 300* would be entitled to exercise the rights conferred on the performer by the said *Part III* or *Part IV* in relation to that performance.

(2) Any remuneration or damages received by a person's personal representatives under a right conferred on them by *subparagraph (1)* shall devolve as part of that person's estate as if the right had subsisted and been vested in him or her immediately before his or her death.

PART V

Copyright and Performers' Rights

37. (1) Except as otherwise expressly provided, nothing in this Act affects an agreement in relation to rental and lending rights established by virtue of the Council Directive No. 92/100/EEC of 19 November, 1992, on rental right and lending right and certain rights relating to copyright in the field of intellectual property made before the 19th day of November, 1992.

(2) An act undertaken pursuant to an agreement referred to in *subparagraph (1)* after the commencement of *Part III* or *Part IV* of this Act shall not be regarded as an infringement of any new right.

38. (1) This Act applies to an agreement concluded before the first day of January, 1995—

(*a*) between two or more co-producers of a film, one of whom is a national of a Member State of the EEA, and

(*b*) the provisions of the agreement grant to the parties exclusive rights to exploit all communication to the public of the film in separate geographical areas.

(2) When an international co-production agreement concluded before the first day of January, 1995, between a co-producer from a Member State of the EEA and one or more co-producers from other Member States of the EEA or third countries expressly provides for a system of division of exploitation rights between the co-producers by geographical areas for all means of communication to the public, without distinguishing the arrangement applicable to communication to the public by satellite from the provisions applicable to the other means of communication, and where communication to the public by satellite of the co-production would prejudice the exclusivity, in particular the language exclusivity, of one of the co-producers or his or her assignees in a given territory, the authorisation by one of the co-producers or his or her assignees for a communication to the public by satellite shall require the prior consent of the holder of that exclusivity, whether co-producer or assignee.

39. Where before the commencement of *Part II, Part III* or *Part IV* of this Act—

(*a*) the owner or prospective owner of copyright in a literary, dramatic, musical or artistic work has authorised a person to make a copy of the work, or

(*b*) the owner or prospective owner of performers' rights in a performance has authorised a person to make a copy of a recording of the performance,

any new right in relation to that copy shall vest on such commencement in the person so authorised, subject to any agreement to the contrary.

40. (1) Subject to *paragraph 41, sections 124* and *297* shall apply and have effect in relation to an agreement concluded before or after the commencement of *Part II* and *Part III* of this Act.

(2) Subject to *paragraph 41, sections 125* and *298* shall apply and have effect accordingly.

41. No right to equitable remuneration under *sections 125* and *298* arises—

(*a*) in respect of any rental of a sound recording or film before the first day of July, 1997, or

(*b*) in respect of any rental after that date of a sound recording or film made in pursuance of an agreement entered into before the first day of July, 1994, unless the author or performer (or his or her successor in title) has, before the first day of January, 1997, notified the person by whom the remuneration would be payable that he or she intends to exercise that right.

42. (1) Any new right in relation to a copyright work shall not apply to a copy of the work acquired by a person before the commencement of *Part II* of this Act for the purpose of renting or lending it to the public.

(2) Any new right in relation to a qualifying performance shall not apply to a copy of a recording of the performance acquired by a person before the commencement of *Part III* and *Part IV* of this Act for the purpose of renting or lending it to the public.

43. (1) *Section 2(7)* and *(8)* shall apply from the commencement of *Parts II, III* and *IV* of this Act in relation to films made on or after the first day of July, 1994.

(2) It is not an infringement of any right which the principal director has under this Act to do anything after the commencement of *Part II* of this Act pursuant to arrangements for the exploitation of a film made before the 19th day of November, 1992.

(3) Nothing in *subparagraph (2)* shall affect any right of a person to equitable remuneration under *section 125*.

(4) Subject to *paragraph 36* and *subparagraphs (1)* to *(3)* of this paragraph, this Act shall apply to works made and to performances given before or after the commencement of *Part II* or *III* of this Act.

44. (1) This paragraph shall apply to the construction of any reference in this Act to qualified persons.

(2) Where, at any time after the commencement of any provisions of this Act, the Government makes an order declaring that certain countries are excluded from the application of this Act the order shall not affect any rights existing before the making of that order.

PART VI

Transitional Provisions and Savings: Databases

45. (1) Where a database—

(*a*) was created on or before the 27th day of March, 1996, and

(*b*) is a copyright work immediately before the commencement of *Part V* of this Act,

copyright shall continue to subsist in the database for the remainder of its copyright term.

(2) In this paragraph "copyright term" means the period of the duration of copyright under *section 24*.

46. Where—

(*a*) the making of a database was completed on or after the first day of January, 1983, and

(*b*) on the commencement of *Part V* of this Act the database right begins to subsist in the database,

the database right shall subsist in the database for the period of 15 years commencing on the first day of January, 1999.

Section 10

SECOND SCHEDULE

PART I

Number and Year	Short Title of Act	Extent of Repeal
No. 10 of 1963	Copyright Act, 1963	Entire Act other than section 59.
No. 19 of 1968	Performers' Protection Act, 1968	Entire Act.
No. 24 of 1987	Copyright (Amendment) Act, 1987	Entire Act.
No. 28 of 1998	Intellectual Property (Miscellaneous Provisions) Act, 1998	Sections 2 and 3.
No. 15 of 1989	Dublin City University Act, 1989	Section 6.
No. 14 of 1989	University of Limerick Act, 1989	Section 7.
No. 11 of 1997	National Cultural Institutions Act, 1997	Section 66.

PART II

Number and Year	Title of Enactment	Extent of Revocation
S.I. No. 26 of 1993	European Communities (Legal Protection of Computer Programs) Regulations, 1993	Entire Regulations.
S.I. No. 158 of 1995	European Communities (Term of Protection of Copyright) Regulations, 1995	Entire Regulations.

Section 188

THIRD SCHEDULE *Section 188.*

1. The agreements, treaties and conventions which shall be reckonable for the purposes of extension of qualification of copyright protection to works under the provisions of *section 188* of this Act shall be:

(1) Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971 and amended on October 2, 1979.

(2) Universal Copyright Convention, as revised at Paris on July 24, 1971.

(3) EEA Agreement.

(4) Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods.

(5) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on October 26, 1961 — in respect, only, of matters addressed by Article 5 and Article 6 of that Convention (see *paragraph 2*, below).

(6) World Intellectual Property Organisation (WIPO) Copyright Treaty, adopted by the Diplomatic Conference at Geneva on December 20, 1996.

(7) World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty, adopted by the Diplomatic Conference at Geneva on December 20, 1996.

Qualifications on application

2. In respect of the Convention specified in *paragraph 1(5)* of this Schedule, *section 188* and this Schedule shall have effect in respect of matters addressed by Article 5 and Article 6 of that Convention, only.

Number 28 *of* 2000

COPYRIGHT AND RELATED RIGHTS ACT 2000

REVISED

Updated to 9 September 2026

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Copyright and Related Rights Acts 2000 to 2026: this Act is one of a group of Acts included in this collective citation (*Copyright and Related Rights (Amendment) Act 2026* (4/2026), s. 5(2)). The Acts in this group are:

- *Copyright and Related Rights Act 2000* (28/2000)
- *Copyright and Related Rights (Amendment) Act 2004* (18/2004)
- *Copyright and Related Rights (Amendment) Act 2007* (39/2007), Parts 1, 2 (ss. 1-13)
- *Copyright and Other Intellectual Property Law Provisions Act 2019* (19/2019), Part 2 (ss. 3-46) and schs. 1, 2
- *Copyright and Related Rights (Amendment) Act 2026* (4/2026)

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at
www.irishstatutebook.ie.