



ST. CHRISTOPHER AND NEVIS

CHAPTER 18.08

COPYRIGHT ACT

Revised Edition
showing the law as at 31 December 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, No. 9 of 1986.

This edition contains a consolidation of the following laws—

COPYRIGHT ACT

Act of 2000 ... in force 1st June 2002

Page
3

**CHAPTER 18.08
COPYRIGHT ACT**

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title
2. Interpretation
3. Publication
4. Encrypted broadcast

PART II

COPYRIGHT

5. Requirements for protection
6. Eligible works
7. Qualification for protection: author
8. Qualification for protection: place of publication, etc.
9. Nature of copyright protection: economic and moral rights
10. Duration of copyright in literary, etc., works
11. Duration of copyright in sound recordings and films
12. Duration of copyright in broadcasts and cable programmes
13. Duration of copyright in typographical arrangements

PART III

MORAL RIGHTS AND RELATED RIGHTS

14. Right to be identified as author etc.
15. Right to object to derogatory treatment of work
16. False attribution of work
17. Right to privacy of photographs and films
18. Duration of moral rights and related rights
19. Consent and waiver of rights
20. Application of provisions to joint works
21. Application of provisions to works

PART IV

OWNERSHIP AND ASSIGNMENT OF RIGHTS

22. Ownership of copyright
23. Assignment and licences
24. Prospective ownership of copyright
25. Rights of exclusive licensee
26. Copyright in manuscript may pass under will
27. Moral rights not assignable
28. Transmission of moral rights etc., on death

PART V

INFRINGEMENT OF RIGHTS

29. Meaning of “action”
30. Part subject to other provisions
31. Acts infringing copyright
32. Action by owner of copyright
33. Order for delivery up in civil proceedings
34. Infringement of rights of exclusive licensee
35. Infringement where rights are concurrent
36. Infringement of right to be identified as author or Director
37. Infringement of right to object to derogatory treatment of work
38. Infringement by possession of infringing article
39. Acts that do not infringe section 15
40. False attribution of work: infringement of right
41. Infringement of privacy right in photographs, etc.
42. Effect of consent and waiver of rights
43. Remedies for infringing moral rights, etc.
44. Presumptions where action relates to literary works, etc.
45. Presumption where action relates to sound recording, film or computer programme
46. Penalties in respect of dealings which infringe copyright 39
47. Presumptions not to apply
48. Order to deliver up in criminal proceedings
49. Application of provisions re-entry, etc.
50. Restricting importation of infringing copies

PART VI

EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

51. Definition of “sufficient acknowledgment”
52. Research and private study
53. Criticism, review and reporting
54. Determining fair dealing
55. Incidental inclusion of protected work
56. Acts done for purposes of instruction or examination
57. Anthologies for educational use
58. Recording of broadcast, etc. by educational establishments
59. Restriction on reprographic copying by educational establishment
60. Subsequent dealings with authorised copies
61. Interpretation of references: Regulations
62. Supply by librarian of copies of published work
63. Supply of copies to other libraries
64. Replacing copies of works
65. Copying of unpublished work
66. Parliamentary and judicial proceedings and statutory inquiries
67. Public records

68. Design documents and models
69. Where design derived from artistic work is exploited by owner, etc.
70. Transfer of works in electronic form
71. Anonymous and pseudonymous literary etc. works
72. Use of notes of recordings of spoken words
73. Reading or recitation in public
74. Representation of artistic works on public display
75. Reconstruction of buildings
76. Subsequent work by same artist
77. Making etc. of recordings of musical work previously made or imported work
78. Licensed rental of sound recordings, etc.
79. Playing of sound recording for purposes of charitable organisation
80. Incidental recording for purposes of broadcast or cable programme
81. Recording of broadcasts for programme control
82. Recording for archival purposes
83. Reception and re-transmission of broadcast in cable programme service
84. Recording for purpose of time-shifting
85. Adaptations
86. Prescribed exceptions to infringement

PART VII

COPYRIGHT LICENSING

87. Jurisdiction of the High Court
88. Procedure in proceedings before the High Court
89. Interpretation
90. Licensing schemes to which sections 91 to 96 apply
91. Reference of proposed licensing scheme to High Court
92. Reference of existing licensing scheme to High Court
93. Further reference of scheme
94. Application for grant of licence in connection with licensing scheme
95. Application for review as to entitlement to a licence
96. Effect of order of Court as to licensing scheme
97. Licences to which sections 98 to 101 apply
98. Reference to High Court of proposed licence
99. Reference to High Court of expiring licence
100. Court may review order as to licence
101. Effect of order of High Court as to licence
102. General consideration: unreasonable discrimination
103. Licences for reprographic copying
104. Licences for educational establishments in respect of works included in broadcasts or cable programmes
105. Licences to reflect conditions imposed by promoters events
106. Licences to reflect payment in respect of underlying rights
107. Mention of the specific matters not to exclude relevant considerations

PART VIII

RIGHTS IN PERFORMANCE

108. Conferment of rights in performances
109. Consent required for recording, etc. of performance
110. Infringement of performer's use of rights by recording
111. Consent and royalty adaptation of recording
112. Infringement of performer's rights by importing, etc. of illicit recording
113. Remuneration
114. Consent required for recording of performance
115. Infringement of recording rights by use of recording
116. Infringement of recording rights by importing, etc. illicit recording
117. Permitted acts in relation to performances
118. Fair dealing for criticism, etc.
119. Incidental inclusion of performance or recording
120. Acts done to recording or performance for purposes of instructions
121. Recording of broadcasts or cable programmes by educational establishment
122. Acts done to performance or recording for Parliamentary proceedings, etc.
123. Transfer of recording of performance in electronic form
124. Use of recordings of spoken words
125. Playing sound recording for charitable purposes
126. Incidental recording for purposes of broadcast or cable programme
127. Recordings for supervision and control of programmes
128. Recording of broadcast, etc. for archival purpose
129. Court may consent on behalf of performer
130. Duration of rights in performances
131. Transmission of rights in performances
132. Consent
133. Infringement actionable as breach of duty
134. Order for delivery up of illicit recording in civil proceedings
135. Criminal liability for making, etc. illicit recordings
136. Order for delivery up of illicit recording in criminal proceedings
137. False representation of authority to give consent

PART IX

GENERAL

138. Order for disposal of infringing copy or illicit recording
139. Period after which remedy or delivery up not available
140. Time limit for prosecution
141. Powers of the Police Force
142. Restrictions on the entry and search of domestic premises
143. Obstruction of members of the Police Force
144. Offences by body corporate
145. Power to apply provisions of Act to other countries
146. Denial of copyright or rights in performances
147. International organisations

148. Territorial waters and Exclusive Economic zone
149. Act applies to ships, aircraft registered in Federation
150. Regulations
151. Transitional provisions
152. Savings
153. Act binds Crown
154. Cessation of UK Copyright Act, 1956 and repeal of Cap. 336

CHAPTER 18.08 COPYRIGHT ACT

AN ACT TO PROVIDE FOR COPYRIGHTS AND RELATED RIGHTS AND THEIR PROTECTION;
AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I PRELIMINARY

Short title.

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

Interpretation.

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

“adaptation” means—

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

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

(ii) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work;

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

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

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

“artistic work” means—

(a) a graphic work, photograph, sculpture or collage, whether the work is of artistic quality or not;

(b) a building or a model of a building, whether the building or model is of artistic quality or not; or

(c) a work of artistic craftsmanship to which neither paragraph (a) nor paragraph (b) applies;

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

(a) a literary or dramatic work, the author of the work;

(b) a musical work, the composer;

(c) an artistic work, other than a photograph, the artist;

- (d) a photograph, the person taking the photograph;
- (e) a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken;
- (f) the typographical arrangement of a published edition, the publisher;
- (g) a broadcast, the person making the broadcast as described in section 4(2) of this Act or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;
- (h) a cable programme, the person providing the cable programme service in which the programme is included;
- (i) a computer-generated literary, dramatic, musical or artistic work, the person by whom the arrangements necessary for the creation of the work are undertaken;

“broadcast” means a transmission by wireless telegraphy of visual images or sounds, or both for reception by the public by any means, including fibre, cable or satellite which—

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

“to broadcast” means to transmit by wireless telegraphy visual images or sounds, or both, for reception by the public by any means, including fibre cable or satellite which, notwithstanding that—

- (a) subsequent to the initial transmission, but before reception by the public, the images or sounds may be carried on a path provided by a material substance;
- (b) the public receiving or capable of receiving the images or sounds is in a country other than that from which the original transmission took place; or
- (c) no member of the public actually received the images or sounds, provided only that members of the public could, if in possession of suitable apparatus, receive them; and “broadcasting” and “re-broadcasting” shall have corresponding meanings;

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

“business” includes a trade or profession;

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

- (a) to the inclusion of a cable programme or work in a cable programme service is a reference to its transmission as part of the service; and
- (b) to the person including it is a reference to the person providing the service;

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

- (a) at two or more places, whether for simultaneous reception or at different times in response to requests by different users; or
- (b) for presentation to members of the public, and which is not, or to the extent that it is not, excepted by regulations made under this Act;

“collective work” means—

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

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

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

“copy”, in relation to—

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

“copyright” means a copyright as described by Part II of this Act;

“country” includes any territory;

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

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

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

“exclusive licence” means a licence in writing signed by or on behalf of the owner of copyright in a work 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 owner of the copyright;

“exclusive recording contract” means a contract between a performer and another person under which that person is entitled, to the exclusion of all other persons, including the performer, to make recordings of one or more of his or her performances with a view to their being shown or played in public, sold, let for hire or otherwise commercially exploited;

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

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

“graphic work” includes—

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

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

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

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

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

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

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

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

“performer” means any actor, singer, musician, dancer or other person who acts, sings, depicts, delivers, declaims, plays in or otherwise performs, a literary, dramatic, musical or artistic work; and references to the performer in the context of the person having performer’s rights, shall be construed to include references to the person who, pursuant to any provision of this Act, is for the time being entitled to exercise those rights;

“performance”, in relation to—

- (a) the rights conferred under Part IX of this Act, means—
 - (i) a dramatic performance which includes dance and mime;

- (ii) a musical performance; or
 - (iii) a reading or recitation of a literary work;
 - (iv) a performance of a variety act or any similar presentation, that is, or to the extent that it is, a live performance, given by one or more individuals; and
- (b) a copyright in a literary, dramatic or musical work, includes—
- (i) delivery in the case of lectures, addresses, speeches and sermons;
 - (ii) any mode of visual acoustic presentation including presentation by means of a sound recording, film, broadcast or cable programme of the work;

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

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

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

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

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

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

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

“qualified person” means—

- (a) in the case of an individual, a person who is a citizen of, or whose habitual residence is in, Saint Christopher and Nevis or a specified country; and
- (b) in the case of a body corporate, a body incorporated or established under any enactment in force in Saint Christopher and Nevis or a specified country;

“qualifying performance” means a performance that—

- (a) is given by an individual who is a qualified person; or
- (b) takes place in Saint Christopher and Nevis or a specified country;

“record” means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a soundtrack associated with a film, and, in relation to a performance, includes a film incorporating the performance;

“recording”, in relation to a performance, means a film or sound recording—

- (a) made directly from the live performance;
- (b) made from a broadcast of, or cable programme, including the performance; or
- (c) made directly or indirectly from another recording of the performance;

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

- (a) for payment in money or money’s worth; or
- (b) in the course of a business, as part of services or amenities for which payment is made, on terms that it will or may be returned;

“reprographic process” means a process—

- (a) for making facsimile copies; or
- (b) involving the use of an appliance for making multiple copies, and, in relation to a work held in electronic form, includes any copying by electronic means, other than the making of a film or sound recording;

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

“sound recording” means—

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

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

“specified country” means a country specified by the Minister by Order pursuant to the provisions of section 144 of this Act;

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

“typeface” includes an ornamental motif used in printing;

“unauthorised”, when used to describe any act done in relation to a work, means—

- (a) if copyright subsists in the work, any act done otherwise than by or with the licence of the owner of the copyright;
- (b) if copyright does not subsist in the work, any act done otherwise than by or with the licence of the author or person lawfully claiming under him or her;

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

“work” means—

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

(c) the typographical arrangement of a published edition, and

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

“work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not separate from the contribution of the other author or authors;

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

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

(3) A reference in this Act—

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

(b) to the person including a cable programme or work in cable programme service is a reference to the person providing the service; and

(c) to the copying of a work of any description shall be construed to include a reference to storing the work in any medium by electronic means.

(4) In determining the person vested with an author’s rights in respect of a literary, dramatic, musical or artistic work the following principles shall apply, that is to say—

(a) if one individual was the author of the work, the rights vested in that individual;

(b) if two or more individuals are the authors of the work, the rights vest in them jointly; and

(c) if there is no evidence to the contrary, the author of a work is the individual whose name is indicated on the work as its author.

Publication.

3. (1) Subject to the following provisions of this section, for the purposes of this Act, publication, in relation to a work, means—

(a) the issue of copies of the work to the public whether by way of sale or otherwise; and

(b) where the work is a literary, musical, dramatic or artistic work, the making available of copies to the public by means of an electronic retrieval system.

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

(a) any subsequent distribution, sale, hiring or loan of those copies; or

(b) any subsequent importation of those copies into Saint Christopher and Nevis.

(3) Without affecting subsection (2) of this section, references in this Act to the issue of copies of a work in relation to sound recordings, films and computer programs, are to the act of issuing copies to the public by rental.

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

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

(5) In the case of a work of architecture in the form of a building or an artistic work incorporated in a building or construction of the building shall be treated as equivalent to publication of the work.

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

- (a) in case of a literary, dramatic or musical work—
 - (i) the performance of the work; or
 - (ii) the broadcasting of the work or its inclusion in a cable programme service otherwise than for the purposes of an electronic retrieval system;
- (b) in the case of an artistic work—
 - (i) the exhibition of the work;
 - (ii) the issue to the public of copies of a graphic work representing, or of photographs of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship;
 - (iii) the issue to the public of copies of a film including the work; or
 - (iv) the broadcasting of the work or its inclusion in a cable programme service otherwise than for the purposes of an electronic retrieval system;
- (c) in the case of a sound recording or film—
 - (i) the playing or showing of the work in public; or
 - (ii) the broadcasting of the work or its inclusion in a cable programme service.

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

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

(9) In determining, for the purpose of any provision of this Act, whether—

- (a) a work has been published;

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

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

Encrypted broadcast.

4. (1) In relation to the broadcast of a work, an encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment is made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.

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

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

PART II

COPYRIGHT

Protected Works

Requirements for protection.

5. (1) Unless otherwise specifically provided in this Act, no copyright shall subsist in any work unless it satisfies the requirements specified in this Part as respects—

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

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

Eligible works.

6. (1) A copyright is a property right which, subject to the provision of this section, may subsist in any of the following categories of work, that is to say—

- (a) original—
 - (i) literary;

- (ii) dramatic;
- (iii) musical; or
- (iv) artistic works;
- (b) sound recordings, films' broadcasts or cable programmes;
- (c) typographical arrangements of published editions,

and the copyright may subsist in a work irrespective of its quality or the purpose for which it was created.

(2) A compilation of data or other material, whether in a machine-readable or other form, is eligible for protection as a literary work, except that—

- (a) the compilation shall only be regarded as original if, by reason of the selection or arrangement of its contents, the compilation constitutes the author's own intellectual creation; and
- (b) the protection does not extend to any data or other material forming part of the compilation and is without prejudice to any copyright subsisting in any such data or other material.

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

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

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

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

(7) A copyright shall not subsist in a cable programme—

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

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

(9) A copyright protection shall not extend to an idea, concept, process, principle, procedure, system or discovery or things of a similar nature.

Qualification for protection: author.

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

(2) A work of joint authorship qualifies for copyright protection if any of the authors satisfies the requirement of subsection (1) of this section, except that where a work qualifies for copyright protection only under this section, only those authors

who satisfy the requirement shall be taken into account for the purposes of sections 9 and 22 of this Act.

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

Qualification for protection: place of publication, etc.

8. (1) A literary, dramatic, musical or artistic work, a sound recording or film, or the typographical arrangement of a published edition, qualifies for copyright protection if, having regard to section 3 of this Act, it is first published in Saint Christopher and Nevis or a specified country.

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

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

Nature of copyright protection: economic and moral rights.

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

- (a) to copy the work;
- (b) to issue copies of the work to the public;
- (c) to perform the work in public or, in the case of a sound recording, film, broadcast or cable programme, to play or show the work in public;
- (d) to broadcast the work or include it in a cable programme service; or
- (e) to make an adaptation of the work and, in relation to such adaptation, to do any or all of the foregoing acts.

(2) For the purposes of subsection (1) of this section, references to doing any act in relation to any work, means doing the act—

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

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

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

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

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

Duration of Copyright Protection

Duration of copyright in literary, etc., works.

10. (1) Subject to the provisions of this section, copyright in any literary, dramatic, musical or artistic work shall expire at the end of a period of fifty years from the end of the calendar year in which the author dies.

(2) Where the authorship of a work referred to in subsection (1) of this section is unknown, copyright in that work shall expire at the end of a period of fifty years from the end of the calendar year in which it was first made available to the public, and subsection (1) of this section shall not apply if the identity of the author becomes known after the end of that period.

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

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

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

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

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

- (a) the reference in subsection (1) of this section to the death of the author shall be construed—
 - (i) where the identity of all the authors is known, as a reference to the death of the last of them to die;
 - (ii) where the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last of the authors whose identity is known; and
- (b) the reference in subsection (2) of this section to the identity of the author becoming known, shall be construed as a reference to the identity of any of the authors becoming known.

(6) This section shall not apply to any copyright which subsists by virtue of section 146 of this Act.

Duration of copyright in sound recordings and films.

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

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

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

(3) In determining whether a sound recording or film has been made available to the public, for the purposes of subsection (2) of this section, any unauthorised act shall be disregarded.

Duration of copyright in broadcasts and cable programmes.

12. (1) Copyright in a broadcast or cable programme shall expire at the end of a period of fifty years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service.

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

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

Duration of copyright in typographical arrangements.

13. Copyright in a typographical arrangement of a published edition shall expire at the end of the period of twenty-five years from the end of the calendar year in which the edition was first published.

PART III

MORAL RIGHTS AND RELATED RIGHTS

Identification with Work

Right to be identified as author etc.

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

that is a protected work have, respectively, the right to be identified as the author or, as the case may be, director of the work in the circumstances specified in this section.

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

- (a) the work or an adaptation of the work is published commercially, performed in public, broadcast or included in a cable programme service; or
- (b) copies of a film or sound recording, including the work or an adaptation thereof are issued to the public;

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

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

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

- (a) the work is published commercially or exhibited in public or a visual image of it is broadcast or included in a cable programme service;
- (b) a film including a visual image of the work is shown in public or copies of such a film are issued to the public; or
- (c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it or of a photograph of it, are issued to the public.

(5) In addition to the right specified in subsection (c) of subsection (4) this of section, the author of a work of architecture in the form of a building has the right to be identified on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed.

(6) The director of a film has the right to be identified as such whenever the film is shown in public, broadcast or included in a cable programme service, or copies of the film are issued to the public.

(7) The right of an author or director under this section is—

- (a) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his or her identity to the notice of a person acquiring a copy;
- (b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building; and
- (c) in any other case, to be identified in a manner likely to bring his or her identity to the attention of a person seeing or hearing the performance, exhibition, film, broadcast or cable programme in question,

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

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

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

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

Objection to Treatment of Work

Right to object to derogatory treatment of work.

15. (1) Subject to subsections (2) and (3) of this section and such exceptions as may be specified in this section or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work shall have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment, and such right shall be infringed by any person who does any of the acts specified in section 37 of this Act in the circumstances specified in that section.

(2) The right referred to in subsection (1) of this section shall not apply in relation to—

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

(3) The right referred to in subsection (1) of this section shall not apply to anything done by or with the authority of the copyright owner in relation to works in

which the copyright originally vested in an international organisation by virtue of section 146 of this Act unless the author or director—

- (a) is identified at the time of the relevant act; or
 - (b) has previously been identified in or on published copies of the work, and where in such a case the right does not apply, it is not infringed if there is a sufficient disclaimer.
- (4) In this section—
- (a) “derogatory treatment”, in relation to a work, means any addition to, deletion from, alteration to or adaptation of the work not being a translation of a literary or dramatic work or an arrangement or transcription of a musical work involving no more than a change of key or register which amounts to a distortion or mutilation of the work, or is otherwise prejudicial to the honour or reputation of the author or director, as the case may be; and
 - (b) “sufficient disclaimer” means a clear and reasonably prominent indication—
 - (i) given at the time of the act; and
 - (ii) if the author or director is then identified, appearing along with the identification,

that the work has been subjected to treatment to which the author or director has not consented.

Related Rights

False attribution of work.

16. (1) A person has the right—
- (a) not to have a literary, dramatic, musical or artistic work falsely attributed to him or her as author; and
 - (b) not to have a film falsely attributed to him or her as director, and in this section, “attribution”, in relation to such work, means a statement, whether express or implied, as to the identity of the author or director.
- (2) The right conferred by subsection (1) of this section shall be infringed in the circumstances specified in section 40 of this Act.

Right to privacy of photographs and films.

17. Subject to section 41 of this Act, a person who, for private and domestic purposes, commissions the taking of a photograph or the making of a film has, where the resulting work is a protected work, the right not to have—
- (a) copies of the work issued to the public;
 - (b) the work exhibited or shown in public; or
 - (c) the work broadcast or included in a cable programme service.

Supplementary

Duration of moral rights and related rights.

18. (1) The rights conferred by sections 14, 15 and 17 of this Act subsist so long as a copyright subsists in the work.

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

Consent and waiver of rights.

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

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

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

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

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

Application of provisions to joint works.

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

(2) The right conferred by section 15 of this Act is, in the case of a work of joint authorship, a right of each joint author and his or her right is satisfied if he or she consents to the treatment in question.

(3) A waiver of rights under section 19 of this Act by one joint author shall not affect the rights of the other joint authors.

(4) Subsections (1), (2) and (3) of this section shall also apply, with such modifications as are necessary, in relation to a film which was, or is alleged to have been, jointly directed as they apply to a work which is, or alleged to be, a work of joint authorship, and for the purpose of this subsection, a film is “jointly directed” if it is made by the collaboration of two or more directors and the contribution of each director is not distinct from that of the other director or directors.

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

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

Application of provisions to works.

21. The rights conferred by—
- (a) sections 14 and 17 of this Act shall apply in relation to the whole or any substantial part of a work; and
 - (b) sections 15 and 16 of this Act shall apply in relation to the whole or any part of a work.

PART IV

OWNERSHIP AND ASSIGNMENT OF RIGHTS

*Ownership of Copyright***Ownership of copyright.**

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

(2) Where a protected work is the work of an employee made during the course of his or her employment, his or her employer is the first owner of any copyright in the work.

(3) Subsection (1) of this section shall not apply to copyright subsisting in a work pursuant to section 146 of this Act.

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

- (5) In respect of folklore, that is to say, all literary and artistic works that—
- (a) constitute a basic element of the traditional and cultural heritage of Saint Christopher and Nevis;
 - (b) were created in Saint Christopher and Nevis by various groups of the community; and
 - (c) survive from generation to generation,

the rights of the author shall vest in the Crown to the same extent as if the Crown had been the original creator of the folklore.

Assignment and licences.

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

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

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

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

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

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

Prospective ownership of copyright.

24. (1) Where by an agreement made in relation to future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright, wholly or partially, to another person, then, if on the coming into existence of the copyright the assignee or another person claiming under him 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 by virtue of this subsection.

(2) 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 right, except a purchaser in good faith for valuable consideration and without notice, actual or constructive, of the licence or a person deriving title from such a purchaser, and references in this Act to doing anything with or without the licence of the copyright owner shall be construed accordingly.

Rights of exclusive licensee.

25. The licensee under an exclusive licence 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 in manuscript may pass under will.

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

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

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

Moral rights not assignable.

27. The rights conferred under Part III of this Act shall not be assignable.

Transmission of moral rights etc., on death.

28. (1) The rights conferred by sections 14, 15 and 17 are not assignable otherwise than by succession.

(2) When copyright forming part of a person's estate passes in part to one person and in part to another any right which passes with the copyright by virtue of subsection (1) of this section shall be correspondingly divided.

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

- (a) where the right is conferred by section 15 or 17, it is a right exercisable by each of them and is satisfied in relation to any of them if he or she consents to the treatment or act in question; and
- (b) any waiver of the right in accordance with section 19 by one of them shall not affect the rights of the others.

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

(5) Any infringement of the right conferred by section 16 of this Act after a person's death shall be actionable by his or her personal representatives.

(6) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his or her estate as if the right of action had subsisted and been vested in him or her immediately before his or her death.

PART V

INFRINGEMENT OF RIGHTS

General Provisions

Meaning of "action".

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

Part subject to other provisions.

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

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

Infringement of Copyright

Acts infringing copyright.

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

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

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

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

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

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

- (a) makes;
- (b) imports into Saint Christopher and Nevis;
- (c) possesses in the course of a business; or
- (d) sells or lets for hire, or offers for sale or hire,

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

(5) Copyright in a work is infringed by a person who, without the licence of the copyright owner, transmits the work by means of a telecommunications system, otherwise than by broadcasting or inclusion in a cable programme service, knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Saint Christopher and Nevis or elsewhere.

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

(7) Where copyright in a work is infringed by a public performance of the work or by the playing or showing of the work in public by means of apparatus for playing sound recordings or showing films or receiving visual images or sounds conveyed by electronic means, the person specified in subsection (8) of this section shall also be liable for the infringement.

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

- (a) a person who supplied the apparatus or any substantial part of it, if when he or she supplied the apparatus or part—
 - (i) he or she knew or had reason to believe that the apparatus was likely to be used so as to infringe copyright; or
 - (ii) in the case of apparatus whose normal use involves a public performance, playing or showing, he or she did not believe on reasonable grounds that it would be used to infringe copyright;
- (b) an occupier of premises who gave permission for the apparatus to be brought onto the premises, if, when he or she gave permission, he or she knew or had reason to believe that the apparatus was likely to be used to infringe copyright; and

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

Remedies of Copyright Owner

Action by owner of copyright.

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

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

(3) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know and had no reason to believe that copyright subsisted in the work to which the action relates, then the plaintiff shall not be entitled to damages against him or her.

(4) Subsection (3) of this section shall not affect any other remedy available to a plaintiff referred to in that subsection.

Order for delivery up in civil proceedings.

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

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

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

(2) An application under subsection (1) of this section shall not be made after the end of the period specified in section 139(1), and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 138 for the disposal of the infringing copy or article, as the may be.

(3) A person to whom an infringing copy or other article is delivered up pursuant to an order made under this section shall, if an order under section 138 of this Act is not made, retain it pending the making of an order or the decision not to make an order, under that section.

Remedies of Exclusive Licensee

Infringement of rights of exclusive licensee.

34. An exclusive licensee has, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

Infringement where rights are concurrent.

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

(2) In an action brought by an exclusive licensee by virtue of this section, a defendant may avail himself or herself of any defence which would have been available to him or her if the action had been brought by the copyright owner.

(3) Where an action for infringement of copyright is brought by the copyright owner or by an exclusive licensee, and the action relates, wholly or partly, to an infringement in respect of which they have concurrent rights of action, the copyright owner or the exclusive licensee, as the case may be, shall not be entitled, except with the leave of the court, to proceed with action, unless the other party is either joined as a plaintiff in the action or added as a defendant, but this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.

(4) A copyright owner or exclusive licensee who is added as a defendant in pursuance of subsection (3) of this section shall not be liable for any costs in the action unless he or she takes part in the proceedings.

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

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

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

*Infringement of Moral Rights and Related Rights***Infringement of right to be identified as author or Director.**

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

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

- (a) fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme;
- (b) the incidental inclusion of the work in an artistic work, sound recording, film, broadcast or cable programme;
- (c) the use of the work for examination purposes;
- (d) acts done for the purposes of parliamentary or judicial proceedings or proceedings of a statutory inquiry;
- (e) the use of design documents and models;
- (f) the use of a design derived from artistic work;
- (g) acts permitted in relation to anonymous or pseudonymous works on the assumption that copyright in the work has expired or that the author is dead.

Infringement of right to object to derogatory treatment of work.

37. (1) The right conferred on an author and a director by section 15 of this Act to object to derogatory treatment of his or her work is infringed where the acts described in subsections (2), (3), (4), and (5) of this section are done in relation to that work, and for the purposes of this Part, “derogatory treatment” has the same meaning as that assigned to it in section 15(4) of this Act.

(2) The right referred to in subsection (1) of this section is infringed in the case of a literary, dramatic, or musical work by a person who—

- (a) publishes commercially, performs in public, broadcasts or includes in a cable programme service, a derogatory treatment of the work; or
- (b) issues to the public copies of a film or sound recording of or including a derogatory treatment of the work.

(3) In the case of an artistic work, the right is infringed by a person who—

- (a) publishes commercially or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme service a visual image of a derogatory treatment of the work;
- (b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of such a film; or
- (c) in the case of a work of architecture in the form of a model for a building or in the case of a sculpture or work of artistic craftsmanship,

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

(4) Subsection (3) of this section shall not apply to a work of architecture in the form of a building except that where the author of the work is identified on the building and it is the subject of derogatory treatment, he or she shall have the right to require the identification to be removed.

(5) In the case of a film, the right is infringed by a person who—

- (a) shows in public, broadcasts or includes in a cable programme service a derogatory treatment of the film; or
- (b) issues to the public copies of a derogatory treatment of the film, or who, along with the film, plays in public, broadcasts or includes in a cable programme service, or issues to the public copies of, a derogatory treatment of the film soundtrack.

Infringement by possession of infringing article.

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

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

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

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

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

Acts that do not infringe section 15.

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

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

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

(2) In subsection (1) of this section, “sufficient disclaimer” means a clear and reasonably prominent indication—

- (a) given at the time of the act; and
- (b) if the author or director is then identified, appearing along with the identification,

that the work has been subjected to treatment to which the author or director has not consented.

False attribution of work: infringement of right.

40. (1) Subject to the provisions of this section, the right conferred on a person by section 16 of this Act not to have a literary, dramatic, musical or artistic work falsely attributed to him or her as author or a film falsely attributed to him or her as director, is infringed by a person who—

- (a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution.
- (b) exhibits in public an artistic work or a copy of an artistic work in or on which there is a false attribution.

(2) The right is also infringed by a person who—

- (a) in the case of a literary, dramatic or musical work, performs the work in public, broadcasts it or includes it in a cable programme service as being the work of a person; or
- (b) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service as being directed by a person, knowing or having reason to believe that the attribution is false.

(3) The right is also infringed by any person who issues to the public or displays in public any material containing a false attribution in connection with any act referred to in subsection (1) or (2) of this section.

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

- (a) possesses or deals with a copy of a work referred to in subsection (1) in or on which there is a false attribution; or
- (b) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it; knowing or having reason to believe that there is an attribution and that it is false.

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

- (a) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author; or
- (b) deals with a copy of such a work as testing a copy of the unaltered work of the author, knowing or having reason to believe that such is not the case.

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

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

Infringement of privacy right in photographs, etc.

41. The right conferred by section 17 of this Act in relation to a commissioned photograph or film is infringed by a person who does or authorises the doing of any act specified in that section in relation to that work, except that the right is not

infringed by any act which, pursuant to Part IV of this Act, would not infringe copyright in the work.

Effect of consent and waiver of rights.

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

Remedies for Infringement of Moral Rights and Related Rights

Remedies for infringing moral rights, etc.

43. (1) Any person whose right under section 14, 15, 16 or 17 of this Act is infringed may institute proceedings in the High Court for injunction to prevent the infringement, or for recovery of damages for the infringement.

(2) The grant of an injunction under subsection (1) of this section shall not deprive a person of any damages that may be awarded to him or her for loss sustained by him or her as a result of the infringement of his or her right.

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

Presumptions

Presumptions where action relates to literary works, etc.

44. (1) This section shall apply to an action brought under this Part with respect to a dramatic, musical or artistic work.

(2) Where a name purporting to be that of the author appeared on a work when it was made or on copies of the work as published, it shall be presumed that the person whose name appeared is the author of the work and also the owner of the literary copyright in the work, until the contrary is proved.

(3) Subsection (2) of this section shall, in the case of a work alleged to be a work of joint authorship, apply in relation to each person alleged to be one of the authors.

(4) Where no name, purporting to be that of the author, appear on a work referred to in subsection (2) of this section, but—

- (a) pursuant to section 8(1) of this Act, the work qualifies for copyright protection by virtue of the country of first publication; and
- (b) a name purporting to be that of the publisher appears on the copies of the work as first published,

then, it shall be presumed that the person whose name appeared on the work was the owner of copyright at the time of publication, until the contrary is proved.

(5) Where the author of the work is dead or where the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed, until the contrary is proved—

- (a) that the work is an original work; and
- (b) that the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

Presumption where action relates to sound recording, film or computer programme.

45. (1) This section shall apply to an action brought under this Part with respect to a sound recording, film or computer programme.

(2) Where an action is brought under this Part with respect to a sound recording, and copies of the recording issued to the public bear a label or other mark stating—

- (a) that a named person was the owner of copyright in the recording at the date of issue of the copies; or
- (b) that the recording was first published in a specified year or in a named country,

then, the label or mark shall be admissible as evidence of the facts stated and be presumed to be correct until the contrary is proved.

(3) Where an action is brought under this Part with respect to a film, and copies of the film issued to the public bear a statement—

- (a) that a named person was the author or director of the film;
- (b) that a named person was the owner of copyright in the film at the date of issue of the copies; or
- (c) that the film was first published in a specific year or in a named country,

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

(4) Where an action is brought under this Part with respect to a computer programme, and copies of the programme are issued to the public in an electronic form bearing a statement—

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

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

(5) The presumptions specified in subsections (2), (3) and (4) of this section shall apply equally in an action relating to an infringement alleged to have occurred before the date on which the copies were issued to the public as they apply to an action relating to an infringement alleged to have occurred on or after that date.

(6) Where an action is brought under this Part with respect to a film, and the film as shown in public, broadcast, or included in a cable programme service bears a statement—

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

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

Offences

Penalties in respect of dealings which infringe copyright.

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

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

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

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

(3) Any person who causes—

- (a) a literary, dramatic or musical work to be performed in public; or
- (b) a sound recording or film to be played or shown in public, otherwise than by reception of a broadcast or cable programme,

knowing or having reason to believe that copyright subsists in the work and that the performance, playing or showing, as the case may be, constitutes an infringement of the copyright, commits an offence.

(4) Any person who commits an offence under subsection (1) of this section shall be liable—

- (a) on summary conviction, to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding two years or both;
- (b) on conviction on indictment, to a fine not exceeding two hundred and fifty thousand dollars or imprisonment for a term not exceeding five years or both.

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

- (a) on summary conviction, to a fine not exceeding twenty-five thousand dollars, or imprisonment for a term not exceeding one year or both;
- (b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars, or imprisonment for a term not exceeding three years or both.

Presumptions not to apply.

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

Order to deliver up in criminal proceedings.

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

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

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

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

- (a) after the time specified in section 138, or
- (b) if it appears to the court unlikely that any order will be made under section 136.

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

(4) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall retain it pending the making of an order or the decision not to make an order under section 136.

Application of provisions re-entry, etc.

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

Restricting importation of infringing copies.

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

- (a) that he or she is the owner of the copyright in the work; and

- (b) that he or she requests the Comptroller to treat as prohibited goods under the Customs (Control and Management) Act, Cap. 20.04 during a period specified in the notice printed copies of the work which constitute infringing copies.
- (2) The period specified in a notice given under subsection (1) of this section shall not exceed five years and shall not extend beyond the end of the period for which the copyright may subsist.
- (3) The owner of the copyright in a sound recording or film may give notice in writing to the Comptroller of Customs—
- (a) that he or she is the owner of the copyright in the work;
 - (b) that infringing copies of the work are expected to arrive in Saint Christopher at a time and a place specified in the notice; and
 - (c) that he or she requests the Comptroller to treat the copies as prohibited goods under the Customs (Control and Management) Act.
- (4) Subject to subsection (5) of this section, where a notice is given in accordance with this section, the importation into Saint Christopher and Nevis of goods to which the notice relates is prohibited, and notwithstanding anything contained in the Customs (Control and Management) Act, a person shall not be liable to any penalty under that Act other than forfeiture of the goods, by reason that any goods are treated as prohibited goods by virtue of this section.
- (5) The importation of any article by a person for his or her private and domestic use is not prohibited under subsection (4) of this section.
- (6) A person giving a notice under this section shall—
- (a) comply with such conditions as the Comptroller of Customs may, by regulations, prescribe; and
 - (b) satisfy such requirements as may be prescribed in connection with the giving of the notice, including requirements relating to—
 - (i) the form of the notice;
 - (ii) the furnishing of evidence, whether on giving notice, or on the importation of the goods, or at both such times;
 - (iii) the payment of fees in respect of the notice;
 - (iv) the giving of security in respect of any liability or expense which the Comptroller may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained;
 - (v) the indemnification of the Comptroller of Customs against any such liability or expenses, whether security has been given or not; and
 - (vi) any incidental or supplementary matters, and the regulations may make different provisions in respect of different classes of cases.
- (7) Regulations made under subsection (6) of this section shall be subject to a negative resolution of the National Assembly.

PART VI

EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

*Preliminary***Definition of “sufficient acknowledgment”.**

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

- (a) in the case of a published work, it is published anonymously or the author has agreed or required that no acknowledgment of his or her name should be made;
- (b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry.

*General Exceptions***Research and private study.**

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

Criticism, review and reporting.

53. (1) Subject to section 54 of this Act—

- (a) fair dealing with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; or
- (b) fair dealing with a protected work, other than a photograph, for the purpose of reporting current events, does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgment.

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

Determining fair dealing.

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

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

Incidental inclusion of protected work.

55. Copyright in a work shall not be infringed—

- (a) by its incidental inclusion in an artistic work, sound recording film, broadcast or cable programme; or
- (b) by the issue to the public of copies of the playing, showing, broadcasting or inclusion in a cable programme service of anything whose making was not an infringement of copyright by virtue of paragraph (a) of this section,

and for the purposes of this section, a musical work, words spoken or sung with music, or so much of a sound recording, broadcast or cable programme as includes a musical work or such words, shall not be regarded as incidentally included if it is deliberately included.

Use of Work for Educational Purposes

Acts done for purposes of instruction or examination.

56. (1) Copyright in a literary, dramatic, musical or artistic work shall not be infringed by being copied in the course of instruction or of preparation for instruction, if the copying is done by a person giving or receiving instruction and is not by means of a reprographic process.

(2) Copyright in a sound recording, film, broadcast or cable programme shall not be infringed by its being copied by making a film or film soundtrack in the course of instruction, or of preparation for instruction, in the making of films or film soundtracks, if the copying is done by a person giving or receiving instruction.

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

Anthologies for educational use.

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

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

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

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

- (a) shall be taken to include excerpts from works by him or her in collaboration with another; and
- (b) shall be, if the passage in question is from such a work, taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.

Recording of broadcast, etc. by educational establishments.

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

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

Restriction on reprographic copying by educational establishment.

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

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

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

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

Subsequent dealings with authorised copies.

60. (1) Where a copy of a work is an infringing copy if its making is not authorised under sections 56, 58, or 59 of this Act and the copy is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and, if that dealing infringes copyright, for all subsequent purposes.

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

Exceptions Affecting Libraries and Archives

Interpretation of references: Regulations.

61. (1) In sections 62, 63, 64, and 65 of this Act, references to the librarian or archivist include references to a person acting on his or her behalf.

(2) Regulations made by the Minister for the purposes of this section may provide that a librarian or archivist who is, pursuant to sections 62 and 65 of this Act, required to be satisfied as to a matter before making or supplying a copy of a work—

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

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

Supply by librarian of copies of published work.

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

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

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

(2) The conditions prescribed pursuant to subsection (1) of this section shall include the following, that is to say—

- (a) that copies shall be supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
- (b) that no person shall be furnished, in relation to an article, with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical;
- (c) in relation to a work referred to in subsection (1)(b) of this section, no person shall be furnished with more than one copy of the same material or of a copy more than a reasonable proportion of any work; and
- (d) that persons to whom copies are supplied are required to pay for them a sum not less than the cost including a contribution to the general expenses of the library attributable to their production.

Supply of copies to other libraries.

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

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

without infringing any copyright in the text of the article or the work, or in any illustrations accompanying the article or work, or, in the case of a published edition, in the typographical arrangement.

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

Replacing copies of works.

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

- (a) preserving or replacing the item by placing the copy in such permanent collection in addition to or in place of the item;
- (b) replacing in the permanent collection of another prescribed library or archive an item which has been lost, destroyed or damaged; without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work, or, in the case of a published edition, in the typographical arrangement.

(2) The prescribed conditions referred to in subsection (1) of this section shall include provisions restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question for the purpose.

Copying of unpublished work.

65. (1) Subject to subsection (2) of this section, the librarian of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or in any illustrations accompanying it.

(2) Subsection (1) of this section shall not apply where—

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

and at the time of the making of the copy the librarian ought to have been aware of that fact.

(3) The prescribed conditions referred to in subsection (1) of this section shall include the following, that is to say—

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

Exceptions Relating To Public Administration

Parliamentary and judicial proceedings and statutory inquiries.

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

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

(3) Subsections (1) and (2) of this section relating to the reporting of proceedings shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

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

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

Public records.

67. Where any protected work or a reproduction of that work is comprised in a public record pursuant to any enactment which is, by virtue of that enactment open to public inspection, the copyright in the work shall not be infringed by the making or supplying to any person of any copy of the work by or under the direction of any officer appointed or acting under the authority of the enactment.

Designs

Design documents and models.

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

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

(3) In this section—

“design” means the design of any aspect of the shape or configuration, whether internal or external, of the whole or part of an article, other than surface decoration; and

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

Where design derived from artistic work is exploited by owner, etc.

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

- (a) making industrial process articles falling to be treated under this Act as copies of the work; and
- (b) marketing such articles in Saint Christopher and Nevis or elsewhere,

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

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

(3) The Minister may, by Order, make provision—

- (a) as to the circumstances in which an article or any description of article is to be regarded for the purposes of this section as made by an industrial process;
- (b) excluding from the operation of this section such articles of a primarily literary or artistic character as he or she thinks fit.

(4) In this section—

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

Exception Relating to Works in Electronic Form

Transfer of works in electronic form.

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

- (a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer or prohibiting the assignment of any licence or terminating any licence on a transfer; or
- (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done by a transferee without infringement of the copyright.

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

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

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

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

Anonymous and pseudonymous literary etc. works.

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

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

(2) Subsection (1)(b)(ii) of this section shall not apply in relation to a work in which copyright originally vested in an international organisation by virtue of section 146 of this Act and in respect of which an order under that section specifies a copyright period longer than fifty years.

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

- (a) the reference in subsection (1) of this section to its being possible to ascertain the identity of the author shall be construed as reference to its being possible to ascertain the identity of any of the authors; and
- (b) the reference in subsection (1)(b)(ii) of this section to the author having died shall be construed as a reference to all the authors having died.

Use of notes of recordings of spoken words.

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

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

it shall not be an infringement of any copyright in the words as a literary work to use the record or material taken from it or to copy the record or material and use the copy for that purpose, if the conditions specified in subsection (2) of this section are satisfied.

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

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

- (d) the use is by or with the authority of a person who is lawfully in possession of the record.

Reading or recitation in public.

73. (1) The reading or recitation in public of any reasonable extract from a published literary or dramatic work shall not be an infringement of copyright in the work, if accompanied by a sufficient acknowledgment.

(2) Copyright in a work shall not be infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service, of a reading or recitation which, by virtue of subsection (1) of this section, does not infringe copyright in the work.

Representation of artistic works on public display.

74. (1) This section shall apply to—

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

(2) The copyright in the work referred to in subsection (1) of this section shall not be infringed by—

- (a) making a graphic work representing it;
- (b) making a photograph or film of it;
- (c) broadcasting or including in a cable programme service a visual image of it; or
- (d) the issue to the public of copies, or the broadcasting or inclusion in a cable programme service, of anything whose making was, by virtue of this section, not an infringement of copyright.

Reconstruction of buildings.

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

Subsequent work by same artist.

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

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

Making etc. of recordings of musical work previously made or imported work.

77. (1) Where sound recordings of a musical work and accompanying words, if any, have, with the licence or consent of the owner of the copyright in the work, been previously made in or imported into Saint Christopher and Nevis for the purposes of retail sale, then, any person may, after the expiry of the manufacture in, or

importation into, Saint Christopher and Nevis of the recordings, and without first obtaining the consent or licence of the owner of the copyright in the work, make or authorise the making of sound recordings of it if the person—

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

(2) Any person who makes or authorises the making of sound recordings pursuant to subsection (1) of this section shall not make or authorise the making of any alterations in, or omissions from, the work unless sound recordings of that work containing similar alterations or omissions have been previously made by or with the licence or consent of the owner of the copyright or unless the alterations or omissions are reasonably necessary for the adaptation of the work to the sound recording in question.

Licensed rental of sound recordings, etc.

78. (1) The Minister may, by Order, provide that in such cases as may be specified in the Order, the rental to the public of copies of sound recordings, films or computer programmes shall be treated as licensed by the copyright owner subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement except that an Order made under subsection (1) shall be subject to negative resolution of the National Assembly.

(2) An Order made under subsection (1) of this section shall not apply if, there is a licensing scheme certified under section 102 of this Act for the purposes of this section providing for the grant of licences.

(3) An Order made under subsection (1) of this section may make different provisions for different cases and may specify cases by reference to any factor relating to the work, the copies rented, the person renting or the circumstances of the rental.

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

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

Playing of sound recording for purposes of charitable organization.

79. It shall not be an infringement of the copyright in a sound recording to play it as part of the activities of, or for the benefit of, a club, society or other organisation if—

- (a) the organisation is not established or conducted for profit and its objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and

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

Miscellaneous Exceptions Respecting Broadcasts and Cable Programmes

Incidental recording for purposes of broadcast or cable programme.

80. (1) This section shall apply where, by virtue of a licence or assignment of copyright, a person is authorised to broadcast from a place in Saint Christopher and Nevis or a specified country, or to include in a cable programme service sent from Saint Christopher and Nevis or a specified country—

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

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

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

(3) A licence referred to under subsection (2) of this section shall be subject to the following conditions, that is to say—

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

(4) A recording, film, photograph or copy made in accordance with this section shall be treated as an infringing copy if it is used for any purpose that is in breach of the condition specified in subsection (3) of this section.

Recording of broadcasts for programme control.

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

(2) Copyright shall not be infringed by the making or use by a prescribed broadcasting organisation of recordings of programmes in connection with and for the purpose of carrying out its functions under the Telecommunications Act, Cap. 16.05.

Recording for archival purposes.

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

(2) For the purposes of this Act, a recording referred to in subsection (1) of this subsection shall not infringe copyright in the broadcast or cable programme or in any work included in it.

(3) For the purposes of subsection (1) of this section, the Minister shall not designate a body unless he or she is satisfied that it is not established or conducted for profit.

Reception and re-transmission of broadcast in cable programme service.

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

(2) Subsection (1) of this section shall apply only where—

- (a) the transmission by the cable programme service takes place simultaneously with the reception of the broadcast;
- (b) the programme in which the literary, dramatic or musical work or film is incorporated is transmitted without alteration of any kind.

(3) The copyright owner referred to in subsection (1) of this section shall be entitled to receive, from the person providing the cable programme service, equitable remuneration in respect of the transmission.

(4) Where the copyright owner referred to in subsection (1) of this section and the person who incorporates the work pursuant to that subsection cannot agree on the remuneration referred to in subsection (3), the remuneration shall be determined by arbitration.

(5) For the purposes of this subsection—

- (a) an alteration to a programme includes an addition to the programme of new material not contained in the programme as broadcast, or an omission from the transmission of any material contained in the programme as broadcast; and
- (b) “material” includes a commercial advertisement.

Recording for purpose of time-shifting.

84. Where a recording of a broadcast or cable programme is made for private and domestic use solely for the purpose of enabling it to be viewed or listened to at a more convenient time, the recording shall not infringe any copyright in the broadcast or cable programme or in any work included in it.

*Adaptations***Adaptations.**

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

*Prescribed Exceptions***Prescribed exceptions to infringement.**

86. (1) Subject to the provisions of this section, the Minister may, by Order subject to negative resolution of the National Assembly, provide that the copyright in a work of the description or category specified in the Order shall not be infringed where, in relation to the work, the acts that are specified in the Order are done in the circumstances so specified.

(2) The Minister shall not make an Order under subsection (1) of this section unless he or she is satisfied that the acts specified in the Order in relation to the work—

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

(3) An Order made under subsection (1) of this section shall make provision for the payment of equitable remuneration to the copyright owner to be determined, in default of agreement, by arbitration, and the Order may contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving effect to the Order.

PART VII

COPYRIGHT LICENSING

*Licensing Schemes and Licensing Bodies***Jurisdiction of the High Court.**

87. Subject to this Act the High Court shall have jurisdiction—

- (a) to determine any dispute which may be referred to it pursuant to any provision of this Part;
- (b) to fix the amount of equitable remuneration or compensation which any provision of this Act requires to be fixed by the High Court, in any case where there has been no agreement between a person and the owner of the copyright as to the amount of remuneration or compensation payable in respect of the use of the work or performance;

- (c) to grant consent on behalf of a performance pursuant to section 129 of this Act.

Procedure in proceedings before the High Court.

88. (1) The procedure regulating the making of references and applications to the High Court and proceedings before the High Court arising out of the jurisdiction conferred on the High Court by this Part, as to the fees chargeable in respect of those proceedings, shall be prescribed by rules of court.

(2) The High Court may order that the costs or expenses of any proceedings before it under this Part which are incurred by any party shall be paid by any other party and may tax or settle the amount of any costs or expenses to be paid under the order or direct in what manner they are to be taxed.

(3) Where—

- (a) the High Court makes an order by way of determination of a dispute referred to it pursuant to this Part, the High Court may direct that the order shall have effect retroactively to such date as the Court specifies, except that no order shall have effect from a date prior to the date on which the dispute was formally referred to the High Court;
- (b) the High Court fixes an amount of equitable remuneration or compensation pursuant to section 87(b) of this Act, the Court may also give directions as to the method and time of payment and may stipulate such other conditions of payment as it considers reasonable.

Interpretation.

89. (1) In this Part—

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

“licensing body” means a society or other organisation which has as its main object or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him or her, of licences, and whose objects include the granting of licences covering works of more than one author;

“licensing scheme” means a scheme setting out—

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he or she acts, is willing to grant licences; and
- (b) the terms on which licences would be granted in those classes of cases;

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

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

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

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

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

Licensing schemes to which sections 91 to 96 apply.

90. The provisions of sections 91, 92, 93, 94, 95 and 96 shall apply to licensing schemes of the following descriptions—

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

References and Applications Respecting Licensing Schemes

Reference of proposed licensing scheme to High Court.

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

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

(3) Where the Court decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme either generally or so far only as it relates to cases of the description to which the reference relates, as the Court may, in the circumstances, determine to be reasonable.

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

Reference of existing licensing scheme to High Court.

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

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

that person or organisation may refer the scheme to the High Court in so far as it relates to cases of that description.

(2) A scheme which is referred to the High Court under this section shall remain in operation until proceedings on the reference are concluded.

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

(4) The order made under subsection (3) of this section may be so as to be in force indefinitely or for such period as the Court may determine.

Further reference of scheme.

93. (1) Where the High Court on a previous reference of a licensing scheme referred to under section 91 or 92 of this Act, or under this section, made an order with respect to the scheme then, while the order remains in force—

- (a) the licensing body;
- (b) a person claiming that he or she requires a licence in a case of the description to which the order applies; or
- (c) an organisation claiming to be representative of such persons,

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

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

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

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

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

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

Application for grant of licence in connection with licensing scheme.

94. (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or her or procure the grant to him or her of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the High Court for relief.

(2) A person who claims, in a case excluded from a licensing scheme, that the licensing body either—

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

may apply to the High Court for relief.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of subsection (2) of this section if—

- (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or
- (b) the case is so similar to those in which licenses are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the High Court is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Court may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

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

Application for review as to entitlement to a licence.

95. (1) Where the High Court makes an order under section 94 of this Act that a person is entitled to a licence under a licensing scheme, the licensing body or the original applicant may apply to the Court to review its order.

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

- (a) within twelve months from the date of the order, or of the decision on a previous application under this section; or
- (b) if the order was made so as to be in force for fifteen months or less, or as a result of the decision on a previous application under this section is due to expire within fifteen months of that decision, until the last three months before the expiry date.

(3) The Court shall, on an application for review, confirm or vary its order as the Court 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 Court as to licensing scheme.

96. (1) A licensing scheme which is confirmed or varied by the Court under section 91 or 92 of this Act shall be in force, or as the case may be, remain in operation so far as it relates to the description of the case in respect of which the order is made, so long as the order remains in force.

(2) While the order is in force, a person who, in a case of a class to which the order applies—

- (a) pays to the licensing body any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained; and
- (b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of copyright as if he or she had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

(3) The Court may direct that the order referred to in subsection (2) of this section, so far as it varies the amount of charges payable, shall have effect from a date before that on which it is made, not being a date earlier than the date on which the reference was made or, where the scheme came into operation after the reference was made, not being a date earlier than the date on which the scheme came into operation.

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

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and
- (b) the reference in subsection (2)(a) of this section to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order, except that no direction may be made where subsection (5) of this section applies.

(5) Where the Court has made an order under section 94 of this Act, that is, an order as to entitlement to licence under a licensing scheme and the order remains in force, the person in whose favour the order is made shall, if he or she—

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

be in the same position as regards infringement of copyright as if he or she had at all material times been a holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

References and Applications Respecting Licences and Licensing Bodies

Licences to which sections 98 to 101 apply.

97. Sections 98, 99, 100, and 101, references and applications with respect to licensing by licensing bodies, shall apply to the following descriptions of licences

granted by a licensing body, otherwise than in pursuance of a licensing scheme, that is to say—

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

Reference to High Court of proposed licence.

98. (1) The terms on which a licensing body proposes to grant a licence may be referred to the High Court by the prospective licensee for determination of reasonableness of the terms.

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

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

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

Reference to High Court of expiring licence.

99. (1) A holder of a licence which is due to expire, by effluxion of time or as a result of a notice given by the licensing body, may apply to the High Court on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) The application referred to subsection (1) of this section shall not be made until the last three months before the licence is due to expire.

(3) A licence in respect of which a reference is made to the Court under this section shall remain in operation until proceedings on the reference are concluded.

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

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

Court may review order as to licence.

100. (1) Where the High Court makes an order under section 98 or 99 of this Act, the licensing body or the person entitled to the benefit of the order may apply to the Court to review its order.

(2) An application referred to in subsection (1) of this section shall not be made, except with the special leave of the Court—

- (a) within twelve months from the date of the order or of the decision on a previous application under this section; or
- (b) if the order was made so as to be in force for fifteen months or less or, as a result of the decision on a previous application under this section, is due to expire within fifteen months of that decision, until the last three months before the expiry date.

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

Effect of order of High Court as to licence.

101. (1) Where the Court makes an order under section 98 or 99 of this Act and the order remains in force, the person entitled to the benefit of the order shall, if he or she—

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

be in the same position as regards infringement of copyright as if he or she had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

(2) The benefit of the order made under section 98 of this Act may be assigned if the assignment is not prohibited under the terms of the—

- (a) Court's order; or
- (b) original licence.

(3) The Court may direct that an order made under section 98 or 99 of this Act, or an order made under section 100 of this Act varying the order, so far as it varies the amount of charges payable, shall have from a date before that on which it was made, not being a date earlier than the date on which the reference or application was made or, where a licence was granted or was due to expire after the reference was made, not being a date earlier than the date on which the licence was granted or, as the case may be, was due to expire.

(4) If a direction referred to in subsection (3) of this section is made—

- (a) any necessary repayments or further payments shall be made in respect of charges already paid; and
- (b) the reference in subsection (1)(a) of this section to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

Factors to be taken into account in certain classes of cases

General consideration: unreasonable discrimination.

102. In determining what is reasonable on a reference or application under this Part relating to a licensing scheme or licence, the High Court shall have regard to—

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

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

Licences for reprographic copying.

103. Where a reference or application is made to the High Court under this Part relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, the Court shall have regard to—

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

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

104. (1) This section shall apply to references or applications under this Part relating to licences for the recording by or on behalf of educational establishments of broadcasts or cable programmes which includes copyright works, or making copies of such recordings, for educational purposes.

(2) The High Court shall, in considering what charges, if any, are to be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

Licences to reflect conditions imposed by promoters events.

105. (1) This section shall apply to references or applications under this Part in respect of licences relating to sound recordings, films, broadcasts or cable programmes which include, or are to include, any entertainment or other event.

(2) The High Court shall have regard to any conditions imposed by the promoters of the entertainment or other event; and, in particular, the Court shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

(3) Nothing in this section shall require the Court to have regard to any condition in so far as such condition—

- (a) purports to regulate the charges to be imposed in respect of the grant of licences; or

- (b) relates to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film, broadcast or cable programme.

Licences to reflect payment in respect of underlying rights.

106. (1) In considering what charges are to be paid for a licence on a reference or application under this Part relating to licences for the rental to the public of copies of sound recordings, films, or computer programmes, the High Court shall take into account any reasonable payments which the owner of the copyright in the sound recording, film or computer programme is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, to owners of copyright in works included in that work.

(2) On any reference or application under this Part relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes, the High Court shall take into account, in considering what charges should be paid for a licence, any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance included in the recording, film, broadcast or cable program.

Mention of the specific matters not to exclude relevant considerations.

107. The mention in sections 102, 103, 104, 105, and 106 of the specific matters to which the High Court is to have regard in certain classes of cases shall not affect the Court's general obligation in any case to have regard to all relevant considerations.

PART VIII

RIGHTS IN PERFORMANCE

Conferment of rights in performances.

108. (1) Subject to this Part—

- (a) a performer shall have the exclusive right to prevent any person, without the consent of the performer, from exploiting his or her performance; and
- (b) a person who has recording rights in relation to a performance, shall have the exclusive right to prevent any person, without his or her consent from making a recording of that performance.
- (2) The rights conferred by this Part are independent of—
- (a) any copyright in or moral rights relating to any work used or performed in the performance; and
- (b) any other right or obligation arising otherwise than under this Part.

*Performer's Rights***Consent required for recording, etc. of performance.**

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

- (a) makes, otherwise than for his or her private and domestic use, a record of the whole or any substantial part of a qualifying performance; or
- (b) broadcasts live, or includes in a cable programme service, the whole or any substantial part of a qualifying performance.

(2) In an action for infringement of a performer's rights brought by virtue of this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he or she believed, on reasonable grounds, that consent had been given.

Infringement of performer's use of rights by recording.

110. A performer's rights are infringed by a person who, without the performer's consent—

- (a) shows or plays in public the whole or any substantial part of a qualifying performance; or
- (b) broadcasts or includes in a cable programme service the whole or any substantial part of a qualifying performance,

by means of a recording made without the performer's consent and when that person knows or has reason to believe that it was so made.

Consent and royalty adaptation of recording.

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

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

Infringement of performer's rights by importing, etc. of illicit recording.

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

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

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

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

available against him or her in respect of the infringement is an amount not exceeding a reasonable compensation for the act complained of.

(3) In subsection (2) of this section, “innocently acquired” means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

Remuneration.

113. (1) Where any phonogramme, the original sound-recording of which was lawfully made in Saint Christopher and Nevis, is used—

- (a) by way of being made available for commercial purposes to the public;
- (b) by way of a broadcast; or
- (c) by way of any other communication to the public,

the user of the phonogramme shall pay to the producer of the phonogramme, remuneration for the production and any performer whose performance constitutes any of the aural effects of the phonogramme.

(2) When more than one performer is entitled to share the remuneration paid to the producer under subsection (1) of this section for the performer, the amount paid by the producer shall be divided equally among those performers or in the manner and shares agreed among the performers.

Rights of Person Having Recording Rights

Consent required for recording of performance.

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

(2) In an action for infringement of those rights brought by virtue of this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he or she believed, on reasonable grounds, that consent had been given.

Infringement of recording rights by use of recording.

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

- (a) he or she shows or plays in public the whole or any substantial part of the performance; or
- (b) he or she 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) of this section to the “appropriate consent” is to the consent of the person who at the time the consent was given had recording rights in relation to the performance or, if there was more than one such person, of all of them.

Infringement of recording rights by importing, etc. illicit recording.

116. (1) A person infringes the rights of a person having recording rights in relation to a performance if, without the consent of the owner of the recording rights, he or she—

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

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

(2) Where, in an action for infringement of the rights referred to in subsection (1) of this section, a defendant shows that the illicit recording was innocently acquired by him or her or a predecessor in title of his or her, the remedy in damages available against him or her in respect of the infringement is an amount not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2) of this section, “innocently acquired” means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

*Exceptions to Infringement***Permitted acts in relation to performances.**

117. (1) Notwithstanding the rights in performances conferred by this Part—

- (a) any act done in relation to a performance or recording in the circumstances specified in sections 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127 and 128 of this Act shall not constitute an infringement of the rights; and
- (b) the High Court may give consent on behalf of a performer in the circumstances specified in section 128 of this Act.

Fair dealing for criticism, etc.

118. Fair dealing with a performance or recording—

- (a) for the purpose of criticism or review of that or another performance or recording, or of a work; or
- (b) for the purpose of reporting current events,

shall not infringe any of the rights conferred by this Part, and the provisions of section 54 of this Act shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

Incidental inclusion of performance or recording.

119. (1) The rights conferred by this Part shall not be infringed—

- (a) by the incidental inclusion in a sound recording, film, broadcast or cable programme of a performance or recording;

- (b) by anything done in relation to copies of, or the playing, showing, broadcasting or inclusion in a cable programme service of anything whose making was not an infringement of those rights by virtue of paragraph (a) of this subsection.

(2) For the purposes of this section, a performance or recording so far as it consists of music, or words spoken or sung with music, shall not be regarded as incidentally included in a sound recording, broadcast, or cable programme, if it is deliberately included.

Acts done to recording or performance for purposes of instructions.

120. (1) The rights conferred by this Part shall not be infringed—

- (a) by the copying of a recording of a performance in the course of instruction, or of preparation for instruction, in the making of films or film soundtracks, if the person by whom the copying is done is the person giving or receiving instructions;
- (b) by the copying of a recording of a performance for the purpose of setting or answering the questions in an examination; or
- (c) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

(2) Where a recording that would otherwise be an illicit recording is made in accordance with this section or section 121 of this Act but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, it shall be treated as an illicit recording for all subsequent purposes.

(3) For the purposes of subsection (3) of this section, “dealt with” means sold or let for hire, or offered or exposed for sale or hire.

Recording of broadcasts or cable programmes by educational establishment.

121. A recording of a broadcast or cable programme or a copy of the 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 it.

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

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

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

Transfer of recording of performance in electronic form.

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

- (a) prohibiting the transfer of the recording by the purchaser;

- (b) imposing obligations that continue after a transfer;
- (c) prohibiting the assignment of any consent;
- (d) terminating any consent on a transfer; or
- (e) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by this Part, except that any recording made by the purchaser which is not transferred shall be treated as an illicit recording for all purposes after the transfer.

(2) Subsection (1) of this section shall apply where the originally purchased recording is no longer usable and what is transferred is a further copy used in its place.

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

(4) This section shall not apply in relation to a recording purchased before the commencement of this Act.

Use of recordings of spoken words.

124. (1) Where a recording of the reading or recitation of a literary 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 the rights conferred by this Part to use the recording, or to copy the recording and use the copy, for that purpose, if the conditions specified in subsection (2) of this section are met.

(2) The conditions referred to in subsection (1) of this subsection are the following—

- (a) the recording should be a direct recording of the reading or recitation and not taken from a previous recording or from a broadcast or cable programme;
- (b) the making of the recording should not have been prohibited by or on behalf of the person giving the reading or recitation;
- (c) the use made of the recording should not be of a kind prohibited by or on behalf of that person before the recording is made; and
- (d) the use is by or with the authority of a person who is lawfully in possession of the recording.

Playing sound recording for charitable purposes.

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

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

Incidental recording for purposes of broadcast or cable programme.

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

(2) The consent given under subsection (1) of this section shall be subject to the following conditions—

- (a) the further recording shall not be used for any other purposes; and
- (b) the recording shall be destroyed within twenty-eight days of being first used for broadcasting the performance or including it in a cable programme service.

(3) A recording made in accordance with this section shall be treated as an illicit recording—

- (a) for the purposes of any use in breach of the condition specified in paragraph (a) of subsection (2) of this section; and
- (b) for all purposes after that condition or the condition specified in paragraph (b) subsection (2) of this section is breached.

Recordings for supervision and control of programmes.

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

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

- (a) by the making or use by a prescribed broadcasting organisation for the purpose of maintaining supervision and control over programmes broadcast by that organisation, of recordings of those programmes; or
- (b) by the making or use of recordings by the Broadcasting Authority in connection with and for the purpose of carrying out its functions under the Telecommunications Act, Cap. 16.05.

Recording of broadcast, etc. for archival purpose.

128. (1) A recording of a broadcast or cable programme of a designated class, or a copy of the recording may be made for the purpose of being placed 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, the word “designated” has the meaning assigned to it in section 82 of this Act.

Court may consent on behalf of performer.

129. (1) Subject to the provisions of this section, the High Court may, on the application of a person who wishes to make a recording from a previous recording of a performance, give consent in a case where—

- (a) the identity or whereabouts of a performer cannot be ascertained by reasonable inquiry; or
- (b) a performer unreasonably withholds his or her consent.

(2) Consent given by the Court has effect as consent of the performer for the purpose of—

- (a) the provisions of this Part relating to the performer's rights; and
- (b) paragraph (a) of subsection (3) of section 135 of this Act,

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

(3) The Court shall not give consent—

- (a) under subsection (1)(a) of this section, except after the service or publication of such notices as may be required by regulations made under this section or as the Court may in any particular case direct;
- (b) under paragraph (b) of subsection (1) of this section unless it is satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interest of his or her, but it shall be for the performer to show what his or her reasons are for withholding consent, and in default of evidence as to his or her reasons the Court may draw such inferences as it thinks fit.

(4) In any case the Court shall take into account the following factors, that is to say, whether the—

- (a) original recording of the performance was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further recording;
- (b) making of the further recording is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original recording of the performance was made.

(5) Where the Court gives consent under this section it shall, in default of agreement between the applicant and the performer, make such order as it thinks fit as to payment to be made to the performer in consideration of consent being given.

Duration and Transmission of Rights in Performances: Consent

Duration of rights in performances.

130. The rights conferred by this Part in respect of a performance shall exist for fifty years from the end of the calendar year in which the performance occurred.

Transmission of rights in performances.

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

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

- (a) the rights shall pass to that person as he or she may, by testamentary disposition, specifically direct; and
- (b) if, or to the extent that there is no such direction, the rights shall be exercisable by his or her personal representative.

(3) References in this Part to the performer, in the context of the person having performer's rights, shall be construed as references to the person for the time being entitled to exercise those rights.

(4) Where by virtue of subsection (2)(a) of this section a right becomes exercisable by more than one person, it shall be exercisable by each of them independently of the others.

(5) Subsections (1), (2) and (3) of this section shall be without prejudice to any rights conferred by this Act on a person who has been assigned the benefit of an exclusive recording contract or licence to make recordings of a performance.

(6) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his or her estate as if the right of action had subsisted and been vested in him or her immediately before his or her death.

Consent.

132. (1) Consent, for the purposes of this Part, may be given in relation to a specific performance, a specified description of performances, or performances generally, and may relate to past or future performances.

(2) A person having recording rights in a performance shall be bound by any prior consent given by a person through whom the first-mentioned person derives his or her rights under the exclusive recording contract or licence in question, in the same way as if the consent had been given by the first-mentioned person.

(3) Where a right conferred by this Part passes to another person, any consent binding on the person previously entitled shall bind the person to whom the right passes in the same way as if the consent had been given by the person to whom the right passes.

Remedies for Infringement of Rights in Performances

Infringement actionable as breach of duty.

133. (1) Any person whose rights under this Part are in imminent danger of being infringed, are being infringed or have been infringed, may institute proceedings in the High Court—

- (a) for an injunction to prevent the infringement or to prohibit the continuation of the infringement; or
- (b) for recovery of damages for the infringement.

(2) The grant of an injunction under subsection (1) of this section shall not deprive a person of any damages that may be awarded to him or her for loss sustained by him or her as a result of the infringement of his or her rights under this Part.

(3) The remedies provided by this section shall be in addition to any other sanctions contained in this Part and any other power of the Court.

Order for delivery up of illicit recording in civil proceedings.

134. (1) Where a person has in his or her possession, custody or control in the course of a business an illicit recording of a performance, a person having performer's rights or recording rights under this Part in relation to the performance may apply to the court for an order that the recording be delivered up to him or her or to such other person as the court may direct.

(2) An application referred to in subsection (1) of this section shall not be made after the end of the period specified in section 139 of this Act, and the court shall not make an order under this section unless it also makes an order under section 138 of this Act for the disposal of the recording or it is of the opinion that there are grounds on which an order under that section could be made.

(3) Nothing in this section shall affect any other power of the court.

*Offences***Criminal liability for making, etc. illicit recordings.**

135. (1) A person who, without sufficient consent—

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

a recording which is, and which he or she knows or has reason to believe is, an illicit recording commits an offence, and shall be liable, on summary conviction, to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding two years or both, or on conviction on indictment, to a fine of two hundred and fifty thousand dollars or imprisonment for a term not exceeding five years, or both.

(2) A person who causes a recording of a performance made without sufficient consent to be shown or played in public, or to be broadcast or included in a cable programme service so as to infringe any of the rights conferred by this Part, if he or she knows or has reason to believe that those rights are infringed commits an offence, and shall be liable—

- (a) on summary conviction, to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding two years, or both;
- (b) on conviction on indictment, to a fine of two hundred and fifty thousand dollars or imprisonment for a term not exceeding five years, or both.

(3) In subsections (1) and (2) of this section, the expression "sufficient consent" means—

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

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

(5) No offence is committed under subsection (1) or (2) of this section by the doing of an act which, by virtue of any provision of this Part, may be done without infringing the rights conferred by this Part.

Order for delivery up of illicit recording in criminal proceedings.

136. (1) The court before which proceedings are brought against a person for an offence under section 135 of this Act may, if satisfied that at the time or his or her arrest or charge he or she had in his or her possession, custody or control in the course of a business an illicit recording of a performance, order that it be delivered up to a person having performer's rights or recording rights in relation to the performance or to such other person as the court may direct.

(2) The Court may, on its own motion or on the application of the prosecution make an order, and an order may be made whether or not the person is convicted of the offence.

(3) The Court may not make an order under this section—

- (a) after the end of the period specified in section 139 of this Act; or
- (b) if it appears to the court unlikely that any order will be made under section 138 of this Act.

(4) An appeal shall lie to the Court of Appeal from an order made under this section.

(5) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 138.

False representation of authority to give consent.

137. (1) A person who makes a false representation that he or she is authorised by any person to give consent for the purposes of this Part in relation to a performance commits an offence, unless he or she believes, on reasonable grounds, that he or she is so authorised.

(2) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding six months, or both.

PART IX

GENERAL

Order for disposal of infringing copy or illicit recording.

138. (1) An application may be made to the court for—

- (a) an order that an infringing copy or article delivered up in pursuance of an order under sections 33 and 48 of this Act shall be—
 - (i) forfeited to the copyright owner; or
 - (ii) destroyed or otherwise dealt with as the court may direct;
 - (b) an order that an illicit recording of a performance delivered up in pursuance of an order made under section 134 or 138 of this Act shall be—
 - (i) forfeited to the person having performer's rights or recording rights in relation to the performances as the court may direct; or
 - (ii) destroyed or otherwise dealt with as the court thinks fit; or
 - (c) a decision that no order under paragraph (a) or (b) of this subsection should be made.
- (2) In considering what order, if any, should be made, the Court shall have regard to all the circumstances of the case and, in particular—
- (a) where the infringement relates to copyright in a work, whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his or her interest;
 - (b) where the infringement relates to rights conferred under Part VIII of this Act, whether other remedies available in an action for infringement of those rights would be adequate to compensate the person or persons entitled to the rights and to protect their interests.
- (3) The Minister may, by regulations, make provision respecting the service of notice on persons having an interest in an infringing copy, or other articles, or an illicit recording, as the case may be, and the person shall be entitled—
- (a) to appear in proceedings for an order under this section whether or not he or she was served with notice; and
 - (b) to appeal against any order made, whether or not he or she appeared.
- (4) An order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.
- (5) Where there is more than one person interested in an infringing copy or other article, or as the case may be, an illicit recording the court shall make such order as it thinks just and may, in particular direct that the copy, article or recording be sold, or otherwise dealt with and the proceeds divided.
- (6) If the court decides that no order should be made under this section, the person in whose possession, custody or control the copy, article, or recording, as the case may be, was before being delivered up or seized shall be entitled to its return.
- (7) References in this section to a person having an interest in a copy or other article or a recording include any person in whose favour an order could be made in respect of the copy, article or, recording as the case may be, under this section.

Period after which remedy or delivery up not available.

139. (1) Subject to subsection (2) of this section, an applications for an order under section 33 or 134 of this Act may not be made after the end of the period of six years

from the date on which the infringing copy or article or, as the case may be, the illicit recording in question was made.

(2) Where, during the whole or any part of that period a person entitled to apply for an order—

- (a) is under a disability; or
- (b) is prevented by fraud or concealment from discovering the facts entitling him or her to apply,

an application may be made by him or her at anytime before the end of the period of six years from the date on which he or she ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

Time limit for prosecution.

140. No prosecution for an offence under this Act shall be commenced after the expiration of five years after the commission of the offence or one year after the discovery of the offence, whatever date last occurs.

Powers of the Police Force.

141. (1) Subject to subsection (3) of this section and section 142, where a member of the Police Force of or above the rank of Inspector is satisfied that there is reasonable cause to believe that an offence against this Act is being committed, he or she may give directions to any constable authorising him or her to—

- (a) enter and search any premises or place;
- (b) stop, board and search any vessel, other than a ship of war, or any aircraft, other than a military aircraft; or
- (c) stop and search any vehicle, in which the constable reasonably suspects there is an infringing copy of a work or an illicit recording or any article used or intended to be used for making infringing copies or illicit recordings; and
- (d) seize, remove or detain—
 - (i) any article which appears to the constable to be an infringing copy or an illicit recording or any other article which appears to him or her to be intended for use for making such copies or recordings; and
 - (ii) anything which appears to him or her to be or to contain, or to be likely to be or to contain, evidence of an offence under this Act.

(2) An officer to whom directions are given under section 142 of this Act may, with such assistance as is necessary—

- (a) break open any outer or inner door of any place which he or she is authorised by this section to enter and search;
- (b) forcibly board any vessel, aircraft or vehicle which he or she is authorised under this Act to stop, board and search;
- (c) remove by force any person or thing obstructing him or her in the exercise of any power conferred on him or her by this Act;
- (d) detain any person found in any place which he or she is authorised under this section to search until such place is searched;

- (e) detain any vessel or aircraft which he or she is authorised under this section to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;
- (f) detain any vehicle which he or she is authorised under this Act to stop and search until it is searched.

(3) It shall be the duty of any officer in the execution of any directions given under subsection (1) of this section to produce the instrument containing the directions to the owner or occupier of any premises, place, vessel or aircraft entered or vehicle stopped, pursuant to such directions if required by the owner or occupier to do so.

Restrictions on the entry and search of domestic premises.

142. A magistrate may, if he or she is satisfied by information on oath that there is reasonable ground for suspecting that there is in any building, ship, boat, aircraft, vehicle, box, receptacle, or other structure or place, hereinafter called the “premises” any article which may be seized, removed or detained under any provision of this Act, issue a warrant authorising a member of the Police Force not below the rank of Sergeant, with such assistance as may be necessary, to enter and search the premises.

Obstruction of members of the Police Force.

143. (1) Without prejudice to any other written law, any person who—

- (a) wilfully obstructs a police officer in the exercise of his or her powers or the performance of his or her duties under this Act;
- (b) wilfully fails to comply with any requirement properly made to him or her by the police officer; or
- (c) without reasonable excuse, fails to give the police officer any other assistance which he or she may reasonably require to be performing his or her duties under this Act,

commits an offence, and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding one year, or both.

(2) A person who, when required to give information to a police officer in the exercise of his or her powers or the performance of his or her duties under this Act, gives false or misleading information to the officer commits an offence and shall be liable, on summary conviction, to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding six months, or both.

(3) Nothing in this section shall be construed as requiring any person to give any information which may incriminate him or her.

Offences by body corporate.

144. Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he or she, as well as the body corporate commits that offence and is liable to be proceeded against and punished accordingly.

Power to apply provisions of Act to other countries.

145. (1) Subject to the provisions of this section, the Minister may, by Order, provide that in respect of any country specified in the order, any provisions of this Act so specified shall apply in relation to—

- (a) persons who are citizens or habitual residents of that country as they apply to persons who are citizens or habitual residents of Saint Christopher and Nevis;
- (b) bodies incorporated or established under the laws of that country as they apply in relation to bodies incorporated or established under the laws of Saint Christopher and Nevis;
- (c) literary, dramatic, musical or artistic works, sound recordings, films and editions first published in that country as they apply in relation to such works, sound recordings, films and editions first published in Saint Christopher and Nevis;
- (d) broadcasts made from or cable programmes sent from that country as they apply in relation to broadcasts made from or cable programmes sent from Saint Christopher and Nevis;
- (e) performances taking place in that country or given by an individual who is a citizen or habitual resident of that country;
- (f) performances incorporated in a phonogramme which is protected by Article 5 of the Rome Convention; or
- (g) performances, not being fixed on a phonogramme, that are carried by a broadcast which is protected by Article 6 of the Rome Convention, as they apply in relation to performances taken in Saint Christopher and Nevis or given by an individual who is a citizen or habitual resident of Saint Christopher and Nevis.

(2) An Order made under subsection (1) of this section may apply to any provisions of this Act, in relation to any country—

- (a) without exception or modification, or subject to such exceptions and modifications as may be specified in the order;
- (b) generally or in relation to such classes of works or other classes of case as may be so specified.

(3) An Order shall not be made under subsection (1) of this section in relation to any country unless—

- (a) the country is a Convention country; or
- (b) a country as to which the Minister is satisfied that provision has been or will be made under its law in respect of the class of works or, as the case may be, the performances, to which the order relates, giving adequate protection to the owners of copyright under this Act or, as the case may be, to Saint Christopher and Nevis performances as defined in section 146(4) of the Act.

(4) In this section, the expression “Convention country” means a country which is a party to a Convention relating to copyright or performers’ rights as may be appropriate, to which Saint Christopher and Nevis is also a party.

Denial of copyright or rights in performances.

146. (1) The Minister may, by Order, make provision in relation to country whose laws—

- (a) do not give adequate protection to Saint Christopher and Nevis works to which this section applies or to Saint Christopher and Nevis performances; or
- (b) do not give adequate protection in the case of one or more classes of the works or performances,

whether the lack of protection relates to the nature of the work or performance or the nationality, citizenship or country of its author or performer or all of those matters.

(2) An Order made for the purposes of this section shall designate the country concerned and may provide either generally or in relation to such classes of cases as are specified in the Order, that copyright shall not subsist in works first published, or, as the case may be, that right in performances shall not subsist in performances first given, after a date specified in the Order which may be a date before the commencement of this Act if, at the time of the first publication of the works or the giving of the performance, as the case may be, the authors of the works or the performers were or are—

- (a) citizens or nationals of that country, not being at that time persons whose habitual residence is in Saint Christopher and Nevis or a specified country excluding the country concerned; or
- (b) in the case of works, bodies incorporated or established under the laws of that country.

(3) The Minister shall, in making an Order under this section, have regard to the nature and extent of the lack of protection for Saint Christopher and Nevis works or Saint Christopher and Nevis performances in consequence of which the Order is being made.

(4) This section shall apply to literary, dramatic, musical and artistic works, sound recordings and films, and for the purposes of this section—

- (a) “Saint Christopher and Nevis’ performances” means—
 - (i) performances given by individuals who are citizens or habitual residents of Saint Christopher and Nevis; or
 - (ii) performances that take place in Saint Christopher and Nevis; and
- (b) “Saint Christopher and Nevis works” means works of which the author is a qualified person at the material time within the meaning of section 7(3) of this Act.

International organisations.

147. (1) This section shall apply to international organisations which the Minister, by Order, declares that it is expedient, that this section applies.

(2) Where an original literary, dramatic, musical or artistic work is first published by or under the direction or control of an international organisation to which this section applies in such circumstances that copyright would not, except by virtue of this subsection, subsist in the work immediately after the first publication thereof, and—

- (a) the work is so published in pursuance of an agreement with the author which does not reserve to the author the copyright, if any, in the work; or
- (b) the work was made in such circumstances that, if it had been first published in Saint Christopher and Nevis, the organisation would have been entitled to the copyright in the work, then, copyright shall subsist in the work by virtue of this section and the organisation shall be first owner of that copyright.

(3) Copyright of which an international organisation is first owner by virtue of this section shall subsist until the end of the period of fifty years from the end of the calendar year in which the work was made or such longer period as may be specified by the Minister, by Order, for the purpose of complying with the international obligations of Saint Christopher and Nevis.

(4) An organisation to which this section applies which otherwise has not, or at some material time otherwise has not, the legal capacities of a body corporate shall have, and shall be deemed at all material times to have had the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright.

Territorial waters and Exclusive Economic zone.

148. (1) For the purposes of this Act, the territorial sea and the exclusive economic zone of Saint Christopher and Nevis shall be treated as part of Saint Christopher and Nevis.

(2) This Act shall apply to things done in the exclusive economic zone as it applies to things done in Saint Christopher and Nevis.

(3) In this section—

- (a) “exclusive economic zone” means the exclusive economic zone of Saint Christopher and Nevis as described in sections 8 and 9 of the Maritime Areas Act, Cap. 7.03;
- (b) “territorial sea” means the territorial sea of Saint Christopher and Nevis as described in section 3 of the Maritime Areas Act.

Act applies to ships, aircraft registered in Federation.

149. (1) This Act shall apply to things done on Saint Christopher and Nevis ship or Saint Christopher and Nevis aircraft as it applies to things done in Saint Christopher and Nevis.

(2) In this section, “Saint Christopher and Nevis ship” and “Saint Christopher aircraft” means respectively, a ship or aircraft registered in Saint Christopher and Nevis.

Regulations.

150. (1) The Minister may generally make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing, he or she may, in particular, make regulations—

- (a) prescribing anything that is by this Act authorised or required to be prescribed;

- (b) prescribing anything that is necessary for the purpose of giving effect to this Act.

Transitional provisions.

151. (1) Where an act done before the appointed day was then an infringement of copyright but is not an infringement of copyright or rights in performance under this Act, then, proceedings in respect of that act may be taken as if this Act had not been passed.

(2) An act done before the appointed day shall not be an infringement of copyright or rights in performances conferred by this Act if that act would not, but for the passing of this Act, have constituted an infringement.

(3) Proceedings for infringement of copyright instituted but not disposed of before the appointed day shall be disposed of as if this Act had not been passed.

(4) Proceedings under this Act for infringement may be taken notwithstanding that the alleged infringement occurred before the appointed day.

(5) In this section “appointed day” means the day appointed pursuant to section 1 of this Act.

Savings.

152. Nothing in this Act shall affect the operation of any rule of equity relating to breach of trust or confidence.

Act binds Crown.

153. This Act shall bind the Crown.

Cessation of UK Copyright Act, 1956 and repeal of Cap. 336.

154. (1) Subject to subsections (2) and (3) of this section, and section 151 of this Act the Copyright Act, 1956 of the United Kingdom and any Order-in-Council and subsidiary legislation made under that Act, in so far as they are part of the laws of Saint Christopher and Nevis shall cease to apply to Saint Christopher and Nevis.

(2) Where, immediately prior to the appointed day, copyright subsists in Saint Christopher and Nevis in any literary, dramatic, musical or artistic work by virtue of the Copyright Act, Cap. 336 referred to in subsection (1) of this section, that copyright shall continue to subsist, and the person entitled to the copyright by virtue of that Act shall be the owner of the copyright, under and subject to this Act, and, in particular—

- (a) the duration of the copyright;
- (b) the acts comprised within the exclusive rights attaching to the copyright; and
- (c) the effect upon the ownership of the copyright of any event or transaction occurring or of any contract or agreement made on or after the appointed day,

shall be governed by this Act.

(3) Where, before the appointed day any person has incurred any expenditure or liability in connection with or in contemplation of the doing of an act in relation to a protected work or a performance in respect of which rights are conferred by this Act, being an act which prior to that date would have been lawful, nothing in this Act

shall diminish or prejudice and rights or interests which, in relation to that work or performance, are subsisting and valuable on the appointed day, unless the person who, by virtue of this Act, is the owner of the copyright or the person having rights in the performance agrees to pay such compensation as, in default of agreement, may be fixed by the High Court.
