



Jersey

**INTELLECTUAL PROPERTY  
(UNREGISTERED RIGHTS) (JERSEY)  
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Jersey

# INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (JERSEY) LAW 2011

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Jersey

## INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (JERSEY) LAW 2011

A **LAW** to restate and amend the law relating to copyright; to establish rights equivalent to copyright; to establish the rights of persons in relation to designs and performances and remedies for infringement of those rights; to establish rights in respect of the fraudulent reception or decoding of transmissions; to make provision for criminal liability in respect of copyright and other rights established by this Law; to provide for the civil and criminal liability of information society service providers in respect of rights conferred by this Law and by the [Patents \(Jersey\) Law 1957](#), the [Registered Designs \(Jersey\) Law 1957](#) and the [Trade Marks \(Jersey\) Law 2000](#); and for connected purposes.

Commencement [[see endnotes](#)]

### PART 1

#### COPYRIGHT

##### CHAPTER 1 – INTRODUCTORY

#### 1 General interpretation

(1) In this Part, unless the context otherwise requires –

“Agent of the Impôts” shall be construed in accordance with Article 4 of the [Customs and Excise \(Jersey\) Law 1999](#);

“archivist” includes a person acting on behalf of an archivist;

“British citizen” means a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas Citizen, a British subject or a British protected person within the meaning of the British Nationality Act 1981 of the United Kingdom;

“broadcast” shall be construed in accordance with Article 4;

“Broadcasting Act 1990” means the Broadcasting Act 1990 of the United Kingdom as extended to Jersey by the Broadcasting Act 1990 (Jersey) Order 1991 and the

Broadcasting Act 1990 (Jersey) (No. 2) Order 1991 and amended by the Communications Act 2003;

“Broadcasting Act 1996” means the Broadcasting Act 1996 of the United Kingdom as extended to Jersey by the Broadcasting (Jersey) Order 2003 and amended by the Communications Act 2003;

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

“business” includes a trade or profession;

“committee of inquiry” means a committee of inquiry established by standing orders made under the [States of Jersey Law 2005](#);

“Communications Act 2003” means the Communications Act 2003 of the United Kingdom as extended to Jersey by the Communications (Jersey) Order 2003;

“country” includes any territory, whether an overseas territory of the United Kingdom or a territory of another country, or any part of the British Islands;

“Court” means the Royal Court;

“EEA” means the European Economic Area;

“EEA State” means a State that is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th August 1993;

“electronic” means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy;

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

“EU Treaties” has the same meaning as in the [European Union \(Jersey\) Law 1973](#);

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

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“in electronic form” means in a form usable only by electronic means;

“information society service” shall be construed in accordance with Article 8;

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

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

“librarian” includes a person acting on behalf of a librarian;

“licensing authority” shall be construed in accordance with Article 381;

“the Minister” means the Minister for External Relations;

“prescribed” means prescribed by Order made by the Minister for the purposes of the provision in which the expression appears;

“protected area” means the British Islands and the EEA;

“public inquiry” means such an inquiry held pursuant to an enactment (other than an inquiry by a committee of inquiry);

“reprographic copy” and “reprographic copying” refer to copying by means of a reprographic process;

“reprographic process” means a process –

- (a) for making facsimile copies; or
- (b) involving the use of an appliance for making multiple copies,

and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a film or sound recording;

“States’ employee” has the meaning given in the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#);

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

“wireless broadcast” means a broadcast by means of wireless telegraphy;

“wireless telegraphy” means the sending of electro-magnetic energy over paths not provided by a material substance constructed or arranged for that purpose but does not include the transmission of microwave energy between terrestrial fixed points.<sup>1</sup>

(2) In this Law –

- (a) a reference to a body corporate includes any partnership or other body which has a legal personality separate from, as the case requires, its partners or members, and a reference to incorporation of a body shall, accordingly, be construed as including a reference to the establishment of such a body;
- (b) a reference to an unincorporated body shall not include any partnership or other body which has a legal personality separate from, as the case requires, its partners or members.

(3) A reference to a Minister or any Minister is a reference to a Minister of the States of Jersey.

(4) Unless the context otherwise requires, a reference in this Law to an Act of Parliament or subordinate legislation of the United Kingdom is a reference to that Act or subordinate legislation as amended from time to time and includes a reference to that Act or subordinate legislation as extended or applied by or under a provision of this Law or another enactment, whether of the United Kingdom or of Jersey.

(5) References in a Part of this Law to a Chapter are to the Chapter of that number in that Part.

(6) The Minister may, by Order, amend the definition “protected area” in paragraph (1).

(7) An Order under paragraph (6) may, in amending the definition “protected area”, provide that it has different meanings in different provisions of this Law.

## **2 Expressions related to copyright**

(1) In this Part, unless the context otherwise requires –

“acts restricted by copyright” shall be construed in accordance with Article 30(1);

“adaptation” shall be construed in accordance with Article 36(3);

“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, irrespective of artistic quality;
- (b) a work of architecture being a building or a model for a building; or
- (c) a work of artistic craftsmanship;

“author”, in relation to a work, shall be construed in accordance with Article 3;

“collective work” means –

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

“commercial publication” shall be construed in accordance with Article 9;

“communication to the public” shall be construed in accordance with paragraph (2);

“computer-generated”, in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work;

“copyright work” means a work of any of those descriptions in which copyright subsists under Article 13;

“database” has the meaning given in Article 6;

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

“exclusive licence” means a licence in writing signed by or on behalf of a copyright owner authorizing the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the copyright owner;

“film” shall be construed in accordance with Article 17;

“future copyright” shall be construed in accordance with Article 119(2);

“graphic work” includes –

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

“infringing copy” shall be construed in accordance with Article 42;

“licensing body” shall be construed in accordance with Article 145(2);

“licensing scheme” shall be construed in accordance with Article 145(1);

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

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

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

“performance”, in relation to a work –

- (a) includes delivery in the case of lectures, addresses, speeches and sermons; and
- (b) in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording, film or broadcast;

“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;

“producer”, in relation to a sound recording or a film, means the person by whom the arrangements necessary for the making of the sound recording or film are undertaken;

“prospective owner” shall be construed in accordance with Article 119(2);

“publication” shall be construed in accordance with Article 9;

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

“qualifying country” shall be construed in accordance with Article 22(2);

“qualifying person” shall be construed in accordance with Article 21(2);

“rental” shall be construed in accordance with Article 10;

“rental right” means the right of a copyright owner to authorize or prohibit the rental of copies of the work;

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

“sound recording” means –

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

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

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

- (a) in the case of a work that has been made available to the public, the work has been made available anonymously;
- (b) in the case of a work that has not been made available to the public, it is not possible for a person to ascertain the identity of the author by reasonable inquiry;

“typeface” includes an ornamental motif used in printing;

“unauthorized”, as regards anything done in relation to a work, means done otherwise than –

- (a) by or with the licence of the copyright owner;
- (b) if copyright does not subsist in the work, by or with the licence of the author or, in a case where Article 24(2) would have applied, the author’s employer or, in either case, persons lawfully claiming under him or her; or
- (c) in pursuance of Article 71;

“unknown authorship” shall be construed in accordance with Article 3;

“work of joint authorship” shall be construed in accordance with Article 3;

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

- (2) References in this Part to communication to the public are to communication to the public by electronic transmission, and in relation to a work include –
  - (a) the broadcasting of the work; and
  - (b) the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.
- (3) In this Part, references to the making of a literary, dramatic or musical work shall be construed in accordance with Article 15(2).
- (4) In this Part, references to copying a work shall be construed in accordance with Article 31, and references to issuing a copy of the work to the public shall be construed in accordance with Article 32.

### **3 “Author” and related expressions**

- (1) In this Part “author” in relation to a work, means the person who creates it.
- (2) That person shall be taken to be –
  - (a) in the case of a sound recording, the producer;
  - (b) in the case of a film, the producer and the principal director;
  - (c) in the case of a broadcast, the person making the broadcast or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast; and
  - (d) in the case of the typographical arrangement of a published edition, the publisher.
- (3) In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.
- (4) For the purposes of this Part a work is of “unknown authorship” if the identity of the author is unknown, or in the case of a work of joint authorship, if the identity of none of the authors is known.
- (5) For the purposes of this Part the identity of an author shall be regarded as unknown if it is not possible for a person to ascertain his or her identity by reasonable inquiry, but if his or her identity is once known it shall not subsequently be regarded as unknown.
- (6) In this Part a “work of joint authorship” means a work produced by the collaboration of 2 or more authors in which the contribution of each author is not distinct from that of the other author or authors.
- (7) A film shall be treated as a work of joint authorship unless the producer and the principal director are the same person.

- (8) A broadcast shall be treated as a work of joint authorship in any case where more than one person is to be taken as making the broadcast.
- (9) References in this Part to the author of a work shall, except as otherwise provided, be construed in relation to a work of joint authorship as references to all the authors of the work.

#### **4 “Broadcast” and related expressions**

- (1) In this Part a “broadcast” means an electronic transmission of visual images, sounds or other information which –
  - (a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them; or
  - (b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public,and which is not excepted by paragraph (2); and references to broadcasting shall be construed accordingly.
- (2) Excepted from the definition of “broadcast” is any internet transmission unless it is –
  - (a) a transmission taking place simultaneously on the internet and by other means;
  - (b) a concurrent transmission of a live event; or
  - (c) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person.
- (3) An encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.
- (4) References in this Part to the person making a broadcast or a transmission which is a broadcast are –
  - (a) to the person transmitting the programme, if he or she has responsibility to any extent for its contents; and
  - (b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission,and references in this Part to a programme, in the context of broadcasting, are to any item included in a broadcast.
- (5) For the purposes of this Part, the place from which a wireless broadcast is made is the place where, under the control and responsibility of the person making the broadcast, the programme-carrying signals are introduced into an uninterrupted chain of communication, including in the case of a satellite transmission, the chain leading to the satellite and down towards the earth.
- (6) The relaying of a broadcast by reception and immediate re-transmission shall be regarded for the purposes of this Part as a separate act of broadcasting from the making of the broadcast which is so re-transmitted.
- (7) Paragraphs (4) and (5) have effect subject to Article 11.

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

## **5 Copyright owner: construction of references**

- (1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Part shall be the person who is entitled to the aspect of copyright relevant for that purpose.
- (2) Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in this Part to the copyright owner shall be to all the owners, so that, in particular, any requirement of the licence of the copyright owner requires the licence of all of them.

## **6 “Database”**

- (1) In this Part “database” means a collection of independent works, data or other materials which –
- (a) are arranged in a systematic or methodical way; and
  - (b) are individually accessible by electronic or other means.
- (2) For the purposes of this Part, a literary work consisting of a database is original if, and only if, by reason of the selection or arrangement of the contents of the database, the database constitutes the author’s own intellectual creation.

## **7 “Educational establishment” and related expressions**

- (1) In this Part “educational establishment” means –
- (a) a school, within the meaning of the [Education \(Jersey\) Law 1999](#); and
  - (b) any other description of establishment (to the extent that it provides instruction) as may be prescribed.
- (2) The Minister may by Order provide that the provisions of this Part relating to educational establishments shall apply, with any modifications and adaptations as may be specified in the Order, in relation to teachers who are employed on behalf of the States to give instruction elsewhere to pupils who are unable to attend an educational establishment.
- (3) In relation to an educational establishment the expressions “teacher” and “pupil” in this Part include, respectively, any person who gives and any person who receives instruction.
- (4) References in this Part to anything being done “on behalf of” an educational establishment are to its being done for the purposes of that establishment by any person.

**8 “Information society service”**

- (1) In this Part “information society service” means any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.
- (2) For the purposes of paragraph (1) –
- “at a distance” means that the service is provided without the parties being simultaneously present;
- “by electronic means” means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electro-magnetic means;
- “at the individual request of a recipient of services” means that the service is provided through the transmission of data on individual request.
- (3) The following table contains matter indicative of the services not covered by the definition “information society service” –

*1. Services not provided ‘at a distance’*

Services provided in the physical presence of the provider and the recipient, even if they involve the use of electronic devices:

- (a) medical examinations or treatment at a doctor's surgery using electronic equipment where the patient is physically present;
- (b) consultation of an electronic catalogue in a shop with the customer on site;
- (c) plane ticket reservation at a travel agency in the physical presence of the customer by means of a network of computers;
- (d) electronic games made available in a video-arcade where the customer is physically present.

*2. Services not provided ‘by electronic means’*

Services having material content even though provided via electronic devices:

- (a) automatic cash or ticket dispensing machines (banknotes, rail tickets);
- (b) access to road networks, car parks, etc., charging for use, even if there are electronic devices at the entrance/exit controlling access and/or ensuring correct payment is made;

Off-line services: distribution of CD roms or software on diskettes;

Services which are not provided via electronic processing/inventory systems:

- (a) voice telephony services;
- (b) telefax/telex services;
- (c) services provided via voice telephony or fax;
- (d) telephone/telefax consultation of a doctor;
- (e) telephone/telefax consultation of a lawyer;

- (f) telephone/telefax direct marketing.

3. *Services not supplied 'at the individual request of a recipient of services'*

Services provided by transmitting data without individual demand for simultaneous reception by an unlimited number of individual receivers (point to multipoint transmission):

- (a) television broadcasting services (including near-video on-demand services) and, for this purpose "television broadcasting" –
- (i) means the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public,
  - (ii) includes the communication of programmes between undertakings with a view to their being relayed to the public, and
  - (iii) does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services;
- (b) radio broadcasting services;
- (c)(televised) teletext.

- (4) The Minister may, by Order, amend the definition "information society service", associated definitions in paragraph (2) and any matter indicative of the services covered, or not covered, by the definition.

## 9 "Publication" and "commercial publication"

- (1) In this Part "publication", in relation to a work –
- (a) means the issue of copies to the public; and
  - (b) includes, in the case of a literary, dramatic, musical or artistic work, making it available to the public by means of an electronic retrieval system,
- and related expressions shall be construed accordingly.
- (2) In this Part "commercial publication", in relation to a literary, dramatic, musical or artistic work means –
- (a) issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public; or
  - (b) making the work available to the public by means of an electronic retrieval system,
- and related expressions shall be construed accordingly.
- (3) In the case of a work of architecture in the form of a building, or an artistic work incorporated in a building, construction of the building shall be treated as equivalent to publication of the work.
- (4) The following do not constitute publication for the purposes of this Part and references to commercial publication shall be construed accordingly –
- (a) in the case of a literary, dramatic or musical work –

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

## **10 “Rental”**

- (1) In this Part, subject to paragraph (3), “rental” means making a copy of a work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage.
- (2) The expression “rental” does not include –
  - (a) making available for the purpose of public performance, playing or showing in public or communication to the public;
  - (b) making available for the purpose of exhibition in public; or
  - (c) making available for on-the-spot reference use.
- (3) References in this Part to the rental of copies of a work include the rental of the original.

## **11 Satellite broadcasts: deemed broadcaster and place of broadcast**

- (1) This Article applies where the place from which a broadcast by way of satellite transmission is made is located in a country outside Jersey and the law of that country fails to provide at least the following level of protection –
  - (a) exclusive rights in relation to wireless broadcasting equivalent to those conferred by Article 35 on the authors of literary, dramatic, musical and artistic works, films and broadcasts;
  - (b) a right in relation to live wireless broadcasting equivalent to that conferred on a performer by Article 265(1)(b); and

- (c) a right for authors of sound recordings and performers to share in a single equitable remuneration in respect of the wireless broadcasting of sound recordings.
- (2) Where the place from which the programme-carrying signals are transmitted to the satellite (“the uplink station”) is located in Jersey –
  - (a) the person operating the uplink station shall be treated as the person making the broadcast; and
  - (b) that place shall be treated as the place from which the broadcast is made.
- (3) Where the uplink station is not located in Jersey but a person who is established in Jersey has commissioned the making of the broadcast –
  - (a) that person shall be treated as the person making the broadcast; and
  - (b) the place in which he or she has his or her principal establishment in Jersey shall be treated as the place from which the broadcast is made.

## **12 General provisions as to construction**

- (1) This Part restates and amends the law of copyright, that is, the provisions of the Copyright Act 1911 of the United Kingdom, and the Musical Copyright Act 1906 of the United Kingdom, as extended to and having effect in Jersey.
- (2) A provision of this Part which corresponds to a provision of the previous law shall not be construed as departing from the previous law merely because of a change of expression.
- (3) Decisions under the previous law may be referred to for the purpose of establishing whether a provision of this Part departs from the previous law, or otherwise for establishing the true construction of this Part.
- (4) In this Article a reference to this Part includes the provisions of Part 9 as they apply for the purpose of this Part.

## **CHAPTER 2 – SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT**

## **13 Copyright**

- (1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work –
  - (a) original literary, dramatic, musical or artistic works;
  - (b) sound recordings, films or broadcasts;
  - (c) the typographical arrangement of published editions.
- (2) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection are met.

**14 Rights subsisting in copyright works**

- (1) The owner of the copyright in a work of any description has the exclusive right to do the acts specified in Chapter 3 as the acts restricted by the copyright in a work of that description.
- (2) In relation to certain descriptions of copyright work the following rights conferred by Chapter 5 subsist in favour of the author, director or commissioner of the work, whether or not he or she is the owner of the copyright –
  - (a) the right to be identified as author or director under Article 105;
  - (b) the right to object to derogatory treatment of work under Article 108;
  - (c) the right to privacy of certain photographs and films under Article 113.

**15 Literary, dramatic and musical works: restriction on copyright**

- (1) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise.
- (2) References in this Part to the time at which a literary, dramatic or musical work is made are to the time at which it is so recorded.
- (3) It is immaterial for the purposes of paragraph (1) whether the work is recorded by or with the permission of the author.
- (4) Where the work is not recorded by the author, nothing in paragraph (1) affects the question whether copyright subsists in the record as distinct from the work recorded.

**16 Sound recordings: restriction on copyright**

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

**17 Films: restriction on copyright**

- (1) In this Part “film” means a recording on any medium from which a moving image may by any means be produced.
- (2) The sound track accompanying a film shall be treated as part of the film for the purposes of this Part.
- (3) Without prejudice to the generality of paragraph (2), where that paragraph applies –
  - (a) references in this Part to showing a film include playing the film sound track to accompany the film;
  - (b) references in this Part to playing a sound recording, or to communicating a sound recording to the public, do not include playing or communicating the film sound track to accompany the film;
  - (c) references in this Part to copying a work, so far as they apply to a sound recording, do not include copying the film sound track to accompany the film; and

- (d) references in this Part to the issuing or rental of copies of a work, so far as they apply to a sound recording, do not include the issuing or rental of copies of the sound track to accompany the film.
- (4) Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film.
- (5) Nothing in this Article affects any copyright subsisting in a film sound track as a sound recording.

## **18 Broadcasts: restriction on copyright**

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

## **19 Published editions: restriction on copyright**

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

## **20 Qualification for copyright protection**

- (1) Copyright does not subsist in a work unless the qualification requirements of Articles 21 to 23 are satisfied as regards –
  - (a) the author;
  - (b) the country in which the work was first published; or
  - (c) in the case of a broadcast, the country from which the broadcast was made.
- (2) Paragraph (1) does not apply in relation to States Assembly copyright, States copyright or Crown copyright, or to copyright which subsists by virtue of Article 188.
- (3) If the qualification requirements of Articles 21 to 23 or Article 182, 183, 184 or 188 are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

## **21 Qualification by reference to author**

- (1) A work qualifies for copyright protection if the author was at the material time a qualifying person.
- (2) In this Part “qualifying person” means –
  - (a) a British citizen;
  - (b) an individual domiciled or resident in Jersey;
  - (c) a body incorporated under the law of Jersey; or
  - (d) so far as provision is made by Order under Article 399, a person prescribed by the Order for the purpose of extending the application of a right conferred by this Part.

- (3) A work of joint authorship qualifies for copyright protection if at the material time any of the authors is a qualifying person, but where a work qualifies for copyright protection only under this Article, only those authors who satisfy that requirement shall be taken into account for the purposes of –
  - (a) Article 24(1) and (2);
  - (b) Article 25, and Article 3(4), so far as it applies for the purposes of Article 25;
  - (c) Article 85; or
  - (d) Article 94.
- (4) The material time in relation to a literary, dramatic, musical or artistic work is –
  - (a) in the case of an unpublished work, when the work was made or, if the making of the work extended over a period, a substantial part of that period; or
  - (b) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his or her death.
- (5) The material time in relation to descriptions of work other than those specified in paragraph (4) is as follows –
  - (a) in the case of a sound recording or film, when it was made;
  - (b) in the case of a broadcast, when the broadcast was made;
  - (c) in the case of the typographical arrangement of a published edition, when the edition was first published.

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

- (1) A literary, dramatic, musical or artistic work, a sound recording or film, or the typographical arrangement of a published edition, qualifies for copyright protection if it is first published in a qualifying country.
- (2) In this Part “qualifying country” means –
  - (a) Jersey; or
  - (b) so far as provision is made by Order under Article 399, a country prescribed by the Order for the purpose of extending the application of a right conferred by this Part.
- (3) For the purposes of this Article, publication in one country shall not be regarded as other than the first publication by reason of simultaneous publication elsewhere, and for this purpose publication elsewhere within the previous 30 days shall be treated as simultaneous.

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

A broadcast qualifies for copyright protection if it is made from a place in a qualifying country.

## **24 Who is the first owner of copyright**

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

- (2) Where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of his or her employment, his or her employer is the first owner of any copyright in the work subject to any agreement to the contrary.
- (3) This Article does not apply to States Assembly copyright, States copyright or Crown copyright, or to copyright which subsists by virtue of Article 188.

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

- (1) This Article has effect with respect to the duration of copyright in a literary, dramatic, musical or artistic work.
- (2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the author dies, subject as follows.
- (3) If the work is of unknown authorship, copyright expires –
  - (a) at the end of the period of 70 years from the end of the calendar year in which the work was made; or
  - (b) if during that period the work is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available,subject as follows.
- (4) Paragraph (2) applies if the identity of the author becomes known before the end of the period specified in paragraph (3)(a) or (b).
- (5) For the purposes of paragraph (3) making available to the public includes –
  - (a) in the case of a literary, dramatic or musical work –
    - (i) performance in public, or
    - (ii) communication to the public;
  - (b) in the case of an artistic work –
    - (i) exhibition in public,
    - (ii) a film including the work being shown in public, or
    - (iii) communication to the public,but in determining generally for the purposes of that paragraph whether a work has been made available to the public no account shall be taken of any unauthorized act.
- (6) If the work is computer-generated paragraphs (1) to (5) do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.
- (7) This Article is adapted as follows in relation to a work of joint authorship –
  - (a) the reference in paragraph (2) to the death of the author shall be construed –
    - (i) if the identity of all the authors is known, as a reference to the death of the last of them to die, and
    - (ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known;

- (b) the reference in paragraph (4) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known.
- (8) This Article does not apply to States Assembly copyright, States copyright or Crown copyright, or to copyright which subsists by virtue of Article 188.

## **26 Duration of copyright in sound recordings**

- (1) This Article has effect with respect to the duration of copyright in a sound recording.
- (2) Copyright expires –
  - (a) at the end of the period of 50 years from the end of the calendar year in which the recording is made;
  - (b) if during that period the recording is published, 50 years from the end of the calendar year in which it is first published; or
  - (c) if during that period the recording is not published but is made available to the public by being played in public or communicated to the public, 50 years from the end of the calendar year in which it is first so made available,but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorized act.

## **27 Duration of copyright in films**

- (1) This Article has effect with respect to the duration of copyright in a film.
- (2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the death occurs of the last to die of the following persons –
  - (a) the principal director;
  - (b) the author of the screenplay;
  - (c) the author of the dialogue;
  - (d) the composer of music specially created for and used in the film,subject as follows.
- (3) If the identity of one or more of the persons referred to in paragraph (2)(a) to (d) is known and the identity of one or more others is not, the reference in that paragraph to the death of the last of them to die shall be construed as a reference to the death of the last whose identity is known.
- (4) If the identity of the persons referred to in paragraph (2)(a) to (d) is unknown, copyright expires –
  - (a) at the end of the period of 70 years from the end of the calendar year in which the film was made; or
  - (b) if during that period the film is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available.
- (5) Paragraphs (2) and (3) apply if the identity of any of those persons becomes known before the end of the period specified in paragraph (4)(a) or (b).

- (6) For the purposes of paragraph (4) making available to the public includes –
  - (a) showing in public; or
  - (b) communicating to the public,but in determining generally for the purposes of paragraph (4) whether a film has been made available to the public no account shall be taken of any unauthorized act.
- (7) If in any case there is no person falling within paragraph (2)(a) to (d), the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the film was made.
- (8) For the purposes of this Article the identity of any of the persons referred to in paragraph (2)(a) to (d) shall be regarded as unknown if it is not possible for a person to ascertain his or her identity by reasonable inquiry, but if the identity of any such person is once known it shall not subsequently be regarded as unknown.
- (9) This Article does not apply to States Assembly copyright, States copyright or Crown copyright.

## **28 Duration of copyright in broadcasts**

- (1) This Article has effect with respect to the duration of copyright in a broadcast.
- (2) Subject to paragraph (3), copyright in a broadcast expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made.
- (3) Copyright in a repeat broadcast expires at the same time as the copyright in the original broadcast and, accordingly, no copyright arises in respect of a repeat broadcast which is broadcast after the expiry of the copyright in the original broadcast.
- (4) In this Article, “repeat broadcast” means one which is a repeat of a broadcast previously made.

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

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

# **CHAPTER 3 – RIGHTS OF COPYRIGHT OWNER**

## **30 Acts restricted by copyright in a work**

- (1) The owner of the copyright in a work has, in accordance with this Chapter, the exclusive right to do the following acts in Jersey –
  - (a) to copy the work;
  - (b) to issue copies of the work to the public;
  - (c) to rent the work to the public;
  - (d) to perform, show or play the work in public;

- (e) to communicate the work to the public;
  - (f) to make an adaptation of the work or do any of the above in relation to an adaptation.
- (2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorizes another to do, any of the acts restricted by the copyright.
- (3) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of it –
  - (a) in relation to the work as a whole or any substantial part of it; and
  - (b) either directly or indirectly,and it is immaterial whether any intervening acts themselves infringe the copyright.
- (4) This Chapter has effect subject to Chapters 4 and 8.

### **31 Primary infringement: copying**

- (1) The copying of work is an act restricted by the copyright in every description of copyright work, and references in this Part to copying and copies shall be construed as follows.
- (2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form and includes storing the work in any medium by electronic means.
- (3) In relation to an artistic work, copying includes the making of a copy in 3 dimensions of a 2-dimensional work and the making of a copy in 2 dimensions of a 3-dimensional work.
- (4) Copying in relation to a film or broadcast includes making a photograph of the whole or any substantial part of any image forming part of the film or broadcast.
- (5) Copying in relation to the typographical arrangement of a published edition means making a facsimile copy of the arrangement.
- (6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.

### **32 Primary infringement: issue of copies to the public**

- (1) The issue to the public of copies of the work is an act restricted by the copyright in every description of copyright work.
- (2) References in this Part to the issue to the public of copies of a work are to –
  - (a) the act of putting into circulation in the protected area copies not previously put into circulation in the protected area by or with the consent of the copyright owner; or
  - (b) the act of putting into circulation outside the protected area copies not previously put into circulation in the protected area or elsewhere.
- (3) References in this Part to the issue to the public of copies of a work do not include –
  - (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation; or

- (b) any subsequent importation of those copies into the protected area, except so far as paragraph (2)(a) applies to putting into circulation in the protected area copies previously put into circulation outside the protected area.
- (4) References in this Part to the issue of copies of a work include the issue of the original.

### **33 Primary infringement: rental of work to the public**

The rental of copies of the work to the public is an act restricted by the copyright in –

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

### **34 Primary infringement: performance, showing or playing of work in public**

- (1) The performance of the work in public is an act restricted by the copyright in a literary, dramatic or musical work.
- (2) The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film or broadcast.
- (3) Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds conveyed by electronic means, the person by whom the visual images or sounds are sent, and in the case of a performance, the performers, shall not be regarded as responsible for the infringement.

### **35 Primary infringement: communication to the public**

The communication to the public of the work is an act restricted by the copyright in –

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

### **36 Primary infringement: making adaptation or act done in relation to adaptation**

- (1) The making of an adaptation of the work is an act restricted by the copyright in a literary, dramatic or musical work and for this purpose an adaptation is made when it is recorded, in writing or otherwise.
- (2) The doing of any of the acts specified in Articles 31 to 35, or paragraph (1), in relation to an adaptation of a work is also an act restricted by the copyright in a literary, dramatic or musical work and for this purpose it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.
- (3) In this Part “adaptation” –

- (a) in relation to a literary work, other than a computer program or a database or in relation to a dramatic work, means –
    - (i) a translation of the work,
    - (ii) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work, and
    - (iii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;
  - (b) in relation to a computer program, means an arrangement or altered version of the program or a translation of it;
  - (c) in relation to a database, means an arrangement or altered version of the database or a translation of it; and
  - (d) in relation to a musical work, means an arrangement or transcription of the work.
- (4) In this Part, in relation to a computer program, a “translation” includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code.
- (5) No inference shall be drawn from this Article as to what does or does not amount to copying a work.

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

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

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

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

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

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

### **39 Secondary infringement: providing means for making infringing copies**

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

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

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

- (2) Copyright in a work is infringed by a person who without the licence of the copyright owner transmits the work by means of a telecommunications system (otherwise than by communication to the public), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Jersey or elsewhere.

#### **40 Secondary infringement: liability of person permitting use of premises for infringing performance**

- (1) Where the copyright in a literary, dramatic or musical work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is also liable for the infringement unless when he or she gave permission he or she believed on reasonable grounds that the performance would not infringe copyright.
- (2) In this Article “place of public entertainment” includes premises which are occupied mainly for other purposes but are from time to time made available for hire for the purposes of public entertainment.

#### **41 Secondary infringement: liability of persons for supply etc. of apparatus for infringing performance, etc.**

- (1) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, by means of apparatus for –
  - (a) playing sound recordings;
  - (b) showing films; or
  - (c) receiving visual images or sounds conveyed by electronic means,the following persons are also liable for the infringement.
- (2) A person who supplied the apparatus, or any substantial part of it, is liable for the infringement if when he or she supplied the apparatus or part –
  - (a) he or she knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright; or
  - (b) in the case of apparatus whose normal use involves a public performance, playing or showing, he or she did not believe on reasonable grounds that it would not be so used as to infringe copyright.
- (3) An occupier of premises who gave permission for the apparatus to be brought onto the premises is liable for the infringement if when he or she gave permission he or she knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright.

- (4) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement if when he 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 so used as to infringe copyright.

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

- (1) In this Part “infringing copy”, in relation to a copyright work, shall be construed in accordance with this Article.
- (2) An article is an infringing copy if its making constituted an infringement of the copyright in the work in question.
- (3) An article is also an infringing copy if –
- (a) it has been or is proposed to be imported into Jersey; and
  - (b) its making in Jersey would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.
- (4) Where in any proceedings the question arises whether an article is an infringing copy and it is shown –
- (a) that the article is a copy of the work; and
  - (b) that copyright subsists in the work or has subsisted at any time,
- it shall be presumed until the contrary is proved that the article was made at a time when copyright subsisted in the work.
- (5) Nothing in paragraph (3) shall be construed as applying to an article which may lawfully be imported into Jersey pursuant to any right available by virtue of Article 2(1) of the [European Union \(Jersey\) Law 1973](#).<sup>2</sup>
- (6) In this Part “infringing copy” includes a copy falling to be treated as an infringing copy by virtue of any of Articles 49(6) and (9), 50(9) and (10), 51(2), 55(5), 58(4), 59(5), 60(2)(b), 84(2), 91(2), 96(4), 98(2) and 99(2), or any provision of an Order under Article 179(1) and (5).

## **CHAPTER 4 – ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS**

### **43 Chapter 4: introductory**

- (1) This Chapter specifies acts which may be done in relation to copyright works notwithstanding the subsistence of copyright.
- (2) This Chapter relates only to the question of infringement of copyright and, except as expressly provided by this Law, does not affect any other right or obligation restricting the doing of any of the specified acts.
- (3) Where it is provided by this Chapter that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe copyright in a work of any description.

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

#### **44 Power to amend Chapter 4**

- (1) The States may, by Regulations, amend in this Chapter the acts which may be done in relation to copyright works, notwithstanding the subsistence of copyright.
- (2) Regulations under paragraph (1) may also amend this Chapter so as to provide that an agreement is void to the extent that it purports to prohibit or restrict an act which would, but for a provision of this Chapter, infringe copyright.
- (3) Regulations under paragraph (1) may also amend –
  - (a) any other provision of this Law which applies or otherwise refers to any provision of this Chapter;
  - (b) any other provision of this Law, consequentially upon any amendment of this Chapter.

#### *General*

#### **45 Making of temporary copies**

Copyright in a literary, dramatic, musical or artistic work, the typographical arrangement of a published edition, a sound recording or a film, is not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable –

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

and which has no independent economic significance.

#### **46 Research and private study**

- (1) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) Fair dealing with the typographical arrangement of a published edition for the purposes of research or private study does not infringe any copyright in the arrangement.
- (3) Copying by a person other than the researcher or student himself or herself is not fair dealing if –
  - (a) in the case of a librarian, or a person acting on behalf of a librarian, he or she does anything which an Order under Article 63 would not permit to be done under Article 61 or 62; or

- (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.
- (4) It is not fair dealing –
  - (a) to convert a computer program expressed in a low level language into a version expressed in a higher level language; or
  - (b) incidentally in the course of so converting the program, to copy it,(these acts being permitted if done in accordance with Article 75).
- (5) It is not fair dealing to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program (these acts being permitted if done in accordance with Article 76).

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

- (1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe copyright in the work if it is accompanied by a sufficient acknowledgement.
- (2) Subject to paragraph (3), fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work if it is accompanied by a sufficient acknowledgement.
- (3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film or broadcast.
- (4) An agreement is void to the extent that it purports to prohibit or restrict an act which would, apart from this Article, infringe copyright.

#### **48 Incidental inclusion of copyright material**

- (1) Copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, film or broadcast.
- (2) Nor is the copyright infringed by anything done in relation to copies of, or the playing, showing or communication to the public of, anything whose making was, by virtue of paragraph (1), not an infringement of the copyright.
- (3) A musical work, words spoken or sung with music, or so much of a sound recording or broadcast as includes a musical work or such words, shall not be regarded as incidentally included in another work if it is deliberately included.

#### *Visually impaired persons*

#### **49 Making single accessible copy for personal use by visually impaired person**

- (1) If a visually impaired person has lawful access to a copy (the “master copy”) of the whole or part of a literary, dramatic, musical or artistic work, whether published or otherwise made available, that is not accessible to the person because of the impairment, it is not an infringement of copyright in the work for an accessible copy

- of the master copy to be made by the person, or on the person's behalf, for the person's personal use.<sup>3</sup>
- (2) Paragraph (1) shall not apply if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it.
- (3) <sup>4</sup>
- (4) An accessible copy made under this Article must be accompanied by –
- (a) a statement that it is made under this Article; and
  - (b) a sufficient acknowledgement.
- (5) If a person makes an accessible copy on behalf of a visually impaired person under this Article and charges for it, the sum charged must not exceed the cost of making and supplying the copy.
- (6) If a person holds an accessible copy made under paragraph (1) when he or she is not entitled to have it made under that paragraph, the copy shall be treated as an infringing copy, unless he or she is a person falling within paragraph (7)(b).
- (7) A person who holds an accessible copy made under paragraph (1) may transfer it to –
- (a) a visually impaired person entitled to have the accessible copy made under paragraph (1); or
  - (b) a person who has lawful access of the master copy and intends to transfer the accessible copy to a person falling within sub-paragraph (a).<sup>5</sup>
- (8) The transfer by a person (“V”) of an accessible copy made under paragraph (1) to another person (“T”) shall be an infringement of copyright by V unless V has reasonable grounds for believing that T is a person falling within paragraph (7)(a) or (b).
- (9) If an accessible copy which would be an infringing copy but for this Article is subsequently dealt with –
- (a) it shall be treated as an infringing copy for the purposes of that dealing; and
  - (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.
- (10) In paragraph (9), “dealt with” means sold or let for hire or offered or exposed for sale or hire or communicated to the public.

## **50 Multiple copies for visually impaired persons**

- (1) If an approved body has lawful access to a copy (the “master copy”) of the whole or part of a literary, dramatic, musical or artistic work, whether published or otherwise made available, it is not an infringement of copyright in the work for the body to make, communicate, make available or distribute accessible copies for the personal use of visually impaired persons to whom the master copy is not available because of their impairment.<sup>6</sup>
- (2) Paragraph (1) shall not apply if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it.

- (3) <sup>7</sup>
- (4) <sup>8</sup>
- (5) An accessible copy made under this Article shall be accompanied by –
  - (a) a statement that it is made under this Article; and
  - (b) a sufficient acknowledgement.
- (6) If an approved body charges for supplying a copy made under this Article, the sum charged shall not exceed the cost of making and supplying the copy.
- (7) An approved body making copies under this Article must, if it is an educational establishment conducted for profit, ensure that the copies will be used only for its educational purposes.
- (8) If the master copy is in copy-protected electronic form, any accessible copy made of it under this Article must, so far as it is reasonably practicable to do so, incorporate the same, or equally effective, copy protection (unless the copyright owner agrees otherwise).
- (9) If an approved body continues to hold an accessible copy made under paragraph (1) when it would no longer be entitled to make or supply such a copy under that paragraph, the copy shall be treated as an infringing copy.
- (10) If an accessible copy which would be an infringing copy but for this Article is subsequently dealt with –
  - (a) it shall be treated as an infringing copy for the purposes of that dealing; and
  - (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.
- (11) In paragraph (10), “dealt with” means sold or let for hire or offered or exposed for sale or hire or communicated to the public.
- (12) An approved body which has made an accessible copy of a work under this Article may communicate, make available or distribute it to another approved body which is entitled to make accessible copies of the work under this Article for the purposes of enabling that other body to make accessible copies of the work.<sup>9</sup>

## **51 Intermediate copies and records created during production of accessible copy**

- (1) An approved body entitled to make accessible copies under Article 50 may hold an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but only –
  - (a) if and so long as the approved body continues to be entitled to make accessible copies of that master copy; and
  - (b) for the purposes of the production of further accessible copies.
- (2) An intermediate copy which is held in breach of paragraph (1) shall be treated as an infringing copy.
- (3) An approved body may communicate, make available, distribute or lend the intermediate copy to another approved body which is entitled to make accessible copies of the work or published edition under Article 50.<sup>10</sup>

- (4) The loan or transfer by an approved body (“A”) of an intermediate copy to another person (“B”) shall be an infringement of copyright by A unless A has reasonable grounds for believing that B –
  - (a) is another approved body which is entitled to make accessible copies of the work or published edition under Article 50; and
  - (b) will only use the intermediate copy for the purposes of the production of further accessible copies.
- (5) If an approved body charges for lending or transferring the intermediate copy, the sum charged must not exceed the cost of the loan or transfer.
- (6) An approved body must –
  - (a) keep records of accessible copies made under Article 50 and of the persons to whom they are supplied;
  - (b) keep records of any intermediate copy lent or transferred under this Article and of the persons to whom it is lent or transferred; and
  - (c) allow the copyright owner or a person acting for him or her, on giving reasonable notice, to inspect the records at any reasonable time.
- (7) Within a reasonable time of making an accessible copy under Article 50, or lending or transferring an intermediate copy under this Article, the approved body must –
  - (a) notify each relevant representative body; or
  - (b) if there is no such body, notify the copyright owner.
- (8) For the purposes of paragraph (7)(a), a relevant representative body is a body which –
  - (a) represents particular copyright owners, or owners of copyright in the type of copyright work concerned; and
  - (b) has given notice to the Minister of the copyright owners, or the classes of copyright owner, represented by it.
- (9) A notice under paragraph (8)(b) shall be accompanied by the prescribed fee, if any.
- (10) The requirement to notify the copyright owner under paragraph (7)(b) shall not apply if it is not reasonably possible for the approved body to ascertain the name and address of the copyright owner.

## **52 Licensing schemes to permit the making of accessible copies**

- (1) Article 50 shall not apply to the making of an accessible copy in a particular form if –
  - (a) a licensing scheme operated by a licensing body is in operation under which licences may be granted by the licensing body permitting the making and supply of copies of the copyright work in that form;
  - (b) the scheme is not unreasonably restrictive; and
  - (c) the scheme and any modification made to it have been notified in accordance with Article 180.
- (2) A scheme shall be unreasonably restrictive if it includes a term or condition which –

- (a) purports to prevent or limit the steps that may be taken under Article 50 or 51; or
  - (b) has that effect.
- (3) Paragraph (2) shall not apply if –
  - (a) the copyright work is no longer published by or with the authority of the copyright owner; and
  - (b) there are reasonable grounds for preventing or restricting the making of accessible copies of the work.
- (4) If Article 50 or 51 is displaced by a licensing scheme, Articles 148 to 151 shall apply in relation to the scheme as if it were one to which those Articles applied as a result of Article 146.

### **53 Orders limiting making of multiple accessible copies following infringement of copyright**

- (1) The Minister may make an Order under this Article if it appears to him or her that the making of copies –
  - (a) under Article 50; or
  - (b) under a licence granted under a licensing scheme that has been notified under Article 52,has led to infringement of copyright on a scale which, in the Minister's opinion, would not have occurred if Article 50 had not been in force, or the licence had not been granted.
- (2) The Order may prohibit one or more named approved bodies, or one or more specified categories of approved body, from –
  - (a) acting under Article 50; or
  - (b) acting under a licence of a description specified in the Order.
- (3) The Order may disapply –
  - (a) the provisions of Article 50; or
  - (b) the provisions of a licence, or a licensing scheme, of a description specified in the Order,in respect of the making of copies of a description so specified.
- (4) If the Minister proposes to make an Order he or she must, before making it, consult –
  - (a) such bodies representing copyright owners as the Minister thinks fit; and
  - (b) such bodies representing visually impaired persons as the Minister thinks fit.
- (5) If the Minister proposes to make an Order which includes a prohibition he or she must, before making it, consult –
  - (a) if the proposed Order is to apply to one or more named approved bodies, that body or those bodies;
  - (b) if it is to apply to one or more specified categories of approved body, to such bodies representing approved bodies of that category or those categories as the Minister thinks fit.

- (6) An approved body which is prohibited by an Order from acting under a licence may not apply to the licensing authority under Article 150(1) in respect of a refusal or failure by a licensing body to grant such a licence.

#### **54 Articles 49 to 53: definitions and other supplementary provision**

- (1) This Article supplements Articles 49 to 53 and includes definitions for the purposes of those Articles.
- (2) A copy of a copyright work (other than an accessible copy made under Article 49 or 50) shall be taken to be accessible to a visually impaired person only if it is as accessible to him or her as it would be if he or she were not visually impaired.
- (3) An “accessible copy”, in relation to a copyright work, means a version which enables a visually impaired person to access the work, including accessing it as feasibly and comfortably as a person who is not visually impaired.<sup>11</sup>
- (4) An accessible copy may include facilities for navigating around the version of the copyright work but may not include –
- (a) changes that are not necessary to overcome problems caused by visual impairment; or
  - (b) changes which infringe the right (provided by Article 108) not to have the work subjected to derogatory treatment.
- (5) “Approved body” means an educational establishment or a body that is not conducted for profit.
- (6) “Visually impaired person” means a person –
- (a) who is blind;
  - (b) who has an impairment of visual function which cannot be improved (for example, by the use of corrective lenses) and which prevents the person from enjoying a copyright work to substantially the same degree as a person who does not have that impairment;
  - (c) who is unable, through physical disability, to hold or manipulate a book;
  - (d) who is unable, through physical disability, to focus or move his or her eyes to the extent that would normally be acceptable for reading; or
  - (e) who has a learning disability that mainly affects reading.<sup>12</sup>
- (7) The form in which or the procedure in accordance with which, any notice required under Article 51(7) or (8) must be given, may be prescribed.

#### *Education*

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

- (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying –
- (a) is done by a person giving or receiving instruction; and

- (b) is not done by means of a reprographic process.
- (2) Copyright in a sound recording, film or broadcast is not infringed by its being copied by making a film or film sound track in the course of instruction, or of preparation for instruction, in the making of films or film sound tracks, provided the copying is done by a person giving or receiving instruction.
- (3) Copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions.
- (4) Paragraph (3) does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.
- (5) Where a copy which would otherwise be an infringing copy is made in accordance with this Article but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright, for all subsequent purposes.
- (6) For the purposes of paragraph (5) “dealt with” means sold or let for hire or offered or exposed for sale or hire.

## **56 Anthologies for educational use**

- (1) The inclusion of a short passage from a published literary or dramatic work in a collection which is –
  - (a) intended for use in educational establishments and is so described in its title, and in any advertisements issued by or on behalf of the publisher; and
  - (b) consists mainly of material in which no copyright subsists,does not infringe the copyright in the work if the work itself is not intended for use in such establishments and the inclusion is accompanied by a sufficient acknowledgement.
- (2) Paragraph (1) does not authorize the inclusion of more than 2 excerpts from copyright works by the same author in collections published by the same publisher over any period of 5 years.
- (3) In relation to any given passage the reference in paragraph (2) 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) if the passage in question is from one of those works, shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.
- (4) References in this Article to the use of a work in an educational establishment are to any use for the educational purposes of that establishment.

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

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

**58 Recording by educational establishments of broadcasts**

- (1) A recording of a broadcast, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast or in any work included in it.
- (2) Copyright is not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of paragraph (1) not an infringement of copyright, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.
- (3) This Article does not apply if or to the extent that there is a licensing scheme notified for the purposes of this Article in accordance with Article 180.
- (4) Where a copy which would otherwise be an infringing copy is made in accordance with this Article but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright, for all subsequent purposes.
- (5) For the purposes of paragraph (4) “dealt with” means sold or let for hire or offered or exposed for sale or hire, or communicated from within the premises of an educational establishment to any person situated outside those premises.

**59 Reprographic copying by educational establishments of passages from works**

- (1) Reprographic copies of passages from literary, dramatic or musical works may, to the extent permitted by this Article, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.
- (2) Not more than one per cent of any work may be copied by or on behalf of an establishment by virtue of this Article in any quarter, that is, in any period 1st January

to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October to 31st December.

- (3) The terms of a licence granted to an educational establishment authorizing the reprographic copying for the purposes of instruction of passages from works shall be of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted under this Article.
- (4) This Article does not apply if or to the extent that there is a licensing scheme notified for the purposes of this Article in accordance with Article 180.
- (5) Where a copy which would otherwise be an infringing copy is made in accordance with this Article but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing and if that dealing infringes copyright, for all subsequent purposes.
- (6) For the purposes of paragraph (5) “dealt with” means sold or let for hire or offered or exposed for sale or hire.

#### *Libraries and archives*

### **60 Declarations as to use of works and liability for false declarations**

- (1) The Minister may by Order provide that, where a librarian or archivist is required to be satisfied as to any matter before making or supplying a copy of a work –
  - (a) he or she may rely on a signed declaration as to that matter by the person requesting the copy, unless he or she is aware that it is false in a material particular; and
  - (b) in any prescribed case, he or she shall not make or supply a copy in the absence of a signed declaration in the form that is prescribed.
- (2) Where a person requesting a copy makes a declaration which is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him or her –
  - (a) he or she shall be liable for infringement of copyright as if he or she had made the copy himself or herself; and
  - (b) the copy shall be treated as an infringing copy.

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

- (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in the text, in any illustrations accompanying the text or in the typographical arrangement.
- (2) The prescribed conditions shall include the following –
  - (a) that copies are supplied only to persons satisfying the librarian that they require them for the purposes of research or private study and will not use them for any other purpose;

- (b) that no person shall be furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical;
- (c) that persons to whom copies are supplied –
  - (i) where a fee is prescribed, are required to pay that fee,
  - (ii) where a minimum fee is prescribed, are required to pay a fee that is not less than that fee, or
  - (iii) where a maximum fee is prescribed, may be required to pay a fee not exceeding that fee.
- (3) The fact that no fee is prescribed for the purposes of paragraph (2)(c) shall not prevent a person to whom copies are supplied being charged for them.

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

- (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply from a published edition a copy of a literary, dramatic, or musical work (other than an article in a periodical) without infringing any copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.
- (2) The prescribed conditions shall include the following –
  - (a) that copies are supplied only to persons satisfying the librarian that they require them for the purposes of research or private study, and will not use them for any other purpose;
  - (b) that no person is furnished with more than one copy of the same material or with a copy of more than a reasonable proportion of any work;
  - (c) that persons to whom copies are supplied –
    - (i) where a fee is prescribed, are required to pay that fee,
    - (ii) where a minimum fee is prescribed, are required to pay a fee that is not less than that fee, or
    - (iii) where a maximum fee is prescribed, may be required to pay a fee not exceeding that fee.
- (3) The fact that no fee is prescribed for the purposes of paragraph (2)(c) shall not prevent a person to whom copies are supplied being charged for them.

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

- (1) Orders for the purposes of Articles 61 and 62 shall contain provision to the effect that a copy shall be supplied only to a person satisfying the librarian that his or her requirement is not related to any similar requirement of another person.
- (2) The Orders may provide –
  - (a) that requirements shall be regarded as similar if the requirements are for copies of substantially the same material at substantially the same time and for substantially the same purpose; and

- (b) that requirements of persons shall be regarded as related if those persons receive instruction to which the material is relevant at the same time and place.

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

- (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply to another prescribed library a copy of –
  - (a) an article in a periodical; or
  - (b) the whole or part of a published edition of a literary, dramatic or musical work, without infringing any copyright in the text of the article or, as the case may be, in the work, in any illustrations accompanying it or in the typographical arrangement.
- (2) Paragraph (1) does not apply if at the time the copy is made the librarian making it knows, or could by reasonable inquiry ascertain, the name and address of a person entitled to authorize the making of the copy.

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

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

#### **66 Copying by librarians or archivists: material not previously made available to public**

- (1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of any document, film, sound recording or other matter in the library or archive without infringing any copyright in any work recorded or comprised in it.
- (2) This Article does not apply if –
  - (a) the document, film, sound recording or other matter was published before it was deposited in the library or archive; or
  - (b) an owner of a copyright work recorded or comprised in it has prohibited copying of the work,and at the time the copy is made the librarian or archivist making it is, or ought to be, aware of that fact.

- (3) The prescribed conditions shall include the following –
- (a) that copies are supplied only to persons satisfying the librarian or archivist that they require them for the 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 –
    - (i) where a fee is prescribed, are required to pay that fee,
    - (ii) where a minimum fee is prescribed, are required to pay a fee that is not less than that fee, or
    - (iii) where a maximum fee is prescribed, may be required to pay a fee not exceeding that fee.
- (4) The fact that no fee is prescribed for the purposes of paragraph (3)(c) shall not prevent a person to whom copies are supplied being charged for them.
- (5) For the purposes of this Article, a document, film, sound recording or other matter is published if –
- (a) copies of it are issued to the public; or
  - (b) it is made available to the public by way of an electronic retrieval system.

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

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

### *Public administration*

## **68 States Assembly and judicial proceedings**

- (1) Copyright is not infringed by anything done for the purposes of proceedings of the States Assembly or judicial proceedings.
- (2) Copyright is not infringed by anything done for the purposes of reporting those proceedings.
- (3) Paragraph (2) shall not be construed as authorizing the copying of a work which is itself a report of the proceedings that has been made available to the public.

## **69 Committees of inquiry and public inquiries**

- (1) Copyright is not infringed by anything done for the purposes of the proceedings of a committee of inquiry or a public inquiry.
- (2) Copyright is not infringed by anything done for the purpose of reporting those proceedings held in public.
- (3) Paragraph (2) shall not be construed as authorizing the copying of a work which is itself a report of the proceedings that has been made available to the public.

- (4) Copyright in a work is not infringed by the issue or communication to the public of copies of the report of a committee of inquiry or a public inquiry containing the work or material from it.

## **70 Copyright material open to public inspection or on official register**

- (1) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, any copyright in the material as a literary work is not infringed by the copying of so much of the material as contains factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve the issuing of copies to the public.
- (2) Where material is open to public inspection pursuant to a statutory requirement, copyright is not infringed by the copying or issuing to the public of copies of the material or the communication of the material to the public, by or with the authority of the appropriate person, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.
- (3) Where material which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contains information about matters of general scientific, technical, commercial or economic interest, copyright is not infringed by the copying or issuing to the public of copies of the material or the communication of the material to the public, by or with the authority of the appropriate person, for the purposes of disseminating that information.
- (4) The Minister may by Order provide that paragraphs (1) to (3) shall, in the cases specified in the Order, apply only to copies marked in such manner as may be so specified.
- (5) The Minister may by Order provide that paragraphs (1) to (3) shall apply, to such extent and with such modifications as may be specified in the Order –
  - (a) to material made open to public inspection by –
    - (i) an international organization specified in the Order, or
    - (ii) a person so specified who has functions in Jersey under an international agreement to which the United Kingdom is party and which extends to Jersey; or
  - (b) to a register maintained by an international organization specified in the Order, as they apply in relation to material open to public inspection pursuant to a statutory requirement or to a statutory register.
- (6) In this Article –
  - “appropriate person” means the person required to make the material open to public inspection or, as the case may be, the person maintaining the register;
  - “enactment” includes an enactment of the United Kingdom, to the extent that it applies to and has effect in Jersey;
  - “statutory register” means a register maintained in pursuance of a requirement imposed by an enactment;
  - “statutory requirement” means a requirement imposed by or under an enactment.

**71 Copyright material communicated to the Crown or the States in the course of public business**

- (1) This Article applies where any copyright work has in the course of public business been communicated to the Crown or the States for any purpose by or with the licence of the copyright owner and a document or other material thing recording or embodying the work is owned by or in the custody or control of the Crown or the States.
- (2) The Crown or the States may, for the purpose for which the work was communicated to it or them, or any related purpose which could reasonably have been anticipated by the copyright owner, copy the work, issue copies of the work and communicate the work to the public, without infringing any copyright in the work.
- (3) The Crown or the States may not copy a work, issue copies of a work to the public or communicate a work to the public by virtue of this Article, if the work has previously been made available to the public otherwise than by virtue of this Article.
- (4) Paragraph (3) shall not apply to a work that has previously been made available to the public if it is reasonably believed that copies of the work are no longer available to the public.
- (5) In paragraph (1) “public business” includes any activity carried on by the Crown or the States.
- (6) In this Article “States” means –
  - (a) the States Assembly;
  - (b) any Minister;
  - (c) any committee established by or under [Standing Orders of the States of Jersey](#) (other than a committee of inquiry).
- (7) This Article has effect subject to any agreement to the contrary between the Crown or the States and the copyright owner.

**72 Copyright material in public records**

Without prejudice to the generality of Article 70, material which is comprised in a public record, within the meaning of Article 3 of the [Public Records \(Jersey\) Law 2002](#), which is open to public inspection in pursuance of that Law, may be copied, and a copy may be supplied to any person, by or with the authority of any officer appointed under that Law, without infringing copyright.

**73 Acts done under authority of enactment**

- (1) Where the doing of a particular act is specifically authorized by an enactment, whenever made, unless the enactment provides otherwise, the doing of that act does not infringe copyright.
- (2) Nothing in this Article shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.
- (3) In this Article “enactment” includes any enactment of the United Kingdom, to the extent that it applies to and has effect in Jersey.

*Computer programs: lawful users***74 Computer programs: backup copies**

- (1) It is not an infringement of copyright for a lawful user of a copy of a computer program to make any backup copy of it which it is necessary for him or her to have for the purposes of his or her lawful use.
- (2) For the purposes of this Article and Articles 75, 76 and 77 a person shall be a lawful user of a computer program if (whether under a licence to do any acts restricted by the copyright in the program or otherwise) he or she has a right to use the program.
- (3) Where an act is permitted under this Article, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (those terms being, by virtue of Article 190, void).

**75 Computer programs: decompilation**

- (1) It is not an infringement of copyright for a lawful user of a copy of a computer program expressed in a low level language –
  - (a) to convert it into a version expressed in a higher level language; or
  - (b) incidentally in the course of so converting the program, to copy it, (that is, to “decompile” it), provided that the conditions in paragraph (2) are met.
- (2) The conditions referred to in paragraph (1) are that –
  - (a) it is necessary to decompile the program to obtain the information necessary to create an independent program which can be operated with the program decompiled or with another program (“the permitted objective”); and
  - (b) the information so obtained is not used for any purpose other than the permitted objective.
- (3) In particular, the conditions in paragraph (2) are not met if the lawful user –
  - (a) has readily available to him or her the information necessary to achieve the permitted objective;
  - (b) does not confine the decompiling to such acts as are necessary to achieve the permitted objective;
  - (c) supplies the information obtained by the decompiling to any person to whom it is not necessary to supply it in order to achieve the permitted objective; or
  - (d) uses the information to create a program which is substantially similar in its expression to the program decompiled or to do any act restricted by copyright.
- (4) Where an act is permitted under this Article, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of Article 190, void).

**76 Computer programs: observing, studying and testing**

- (1) It is not an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to determine

the ideas and principles which underlie any element of the program if he or she does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he or she is entitled to do.

- (2) Where an act is permitted under this Article, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of Article 190, void).

## **77 Computer programs: other acts permitted to lawful users**

- (1) It is not an infringement of copyright for a lawful user of a copy of a computer program to copy or adapt it, provided that the copying or adapting –
  - (a) is necessary for his or her lawful use; and
  - (b) is not prohibited under any term or condition of an agreement regulating the circumstances in which his or her use is lawful.
- (2) It may, in particular, be necessary for the lawful use of a computer program to copy it or adapt it for the purpose of correcting errors in it.
- (3) This Article does not apply to any copying or adapting permitted under Article 74, 75 or 76.

### *Databases*

## **78 Acts permitted in relation to databases**

- (1) It is not an infringement of copyright in a database for a person who has a right to use the database or any part of the database (whether under a licence to do any of the acts restricted by the copyright in the database or otherwise) to do, in the exercise of that right, anything which is necessary for the purposes of access to and use of the contents of the database or of that part of the database.
- (2) Where an act which would otherwise infringe copyright in a database is permitted under this Article, it is irrelevant whether or not there exists any term or condition in any agreement which purports to prohibit or restrict the act (those terms being, by virtue of Article 191, void).

### *Designs*

## **79 Acts permitted in relation to design documents and models**

- (1) It is not an infringement of any copyright in a design document or model recording or embodying a design for anything other than an artistic work or a typeface to make an article to the design or to copy an article made to the design.
- (2) Nor is it an infringement of the copyright to issue to the public, or include in a film or communicate to the public, anything the making of which was, by virtue of paragraph (1), not an infringement of that copyright.
- (3) In this Article –

“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;

“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.

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

- (1) This Article applies where an artistic work has been exploited, by or with the licence of the copyright owner, by –
  - (a) making by an industrial process articles falling to be treated for the purposes of this Part as copies of the work; and
  - (b) marketing those articles, in Jersey or elsewhere.
- (2) After the end of the period of 25 years from the end of the calendar year in which such articles are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.
- (3) Where only part of an artistic work is exploited as described in paragraph (1), paragraph (2) applies only in relation to that part.
- (4) 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 Article as made by an industrial process; and
  - (b) excluding from the operation of this Article any articles of a primarily literary or artistic character as the Minister thinks fit.
- (5) In this Article –
  - (a) references to articles do not include films; and
  - (b) references to the marketing of an article are to its being sold or let for hire or offered or exposed for sale or hire.

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

- (1) The copyright in an artistic work is not infringed by anything done –
  - (a) in pursuance of an assignment or licence made or granted by a person registered under the [Registered Designs \(Jersey\) Law 1957](#) as the proprietor of a corresponding design; and
  - (b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation or invalidation of the registration or for rectifying the relevant entry in the register of designs,and this is so notwithstanding that the person registered as the proprietor was not the proprietor of the design for the purposes of the [Registered Designs \(Jersey\) Law 1957](#).
- (2) In paragraph (1) a “corresponding design”, in relation to an artistic work, means a design within the meaning of the [Registered Designs \(Jersey\) Law 1957](#) which if

applied to an article would produce something which would be treated for the purposes of this Part as a copy of the artistic work.

### *Typefaces*

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

- (1) It is not an infringement of copyright in an artistic work consisting of the design of a typeface –
  - (a) to use the typeface in the ordinary course of typing, composing text, typesetting or printing;
  - (b) to possess an article for the purpose of such use; or
  - (c) to do anything in relation to material produced by such use,and this is so notwithstanding that an article is used which is an infringing copy of the work.
- (2) However, the following provisions of this Part apply in relation to persons making, importing or dealing with articles specifically designed or adapted for producing material in a particular typeface, or possessing those articles for the purpose of dealing with them, as if the production of material as mentioned in paragraph (1) did infringe copyright in the artistic work consisting of the design of the typeface –
  - (a) Article 39;
  - (b) Article 129;
  - (c) Article 131;
  - (d) Article 139(2);
  - (e) Article 140.
- (3) The references in paragraph (2) to “dealing with” an article are to selling, letting for hire, or offering or exposing for sale or hire, exhibiting in public, or distributing.

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

- (1) This Article applies to the copyright in an artistic work consisting of the design of a typeface where articles specifically designed or adapted for producing material in that typeface have been marketed by or with the licence of the copyright owner.
- (2) After the period of 25 years from the end of the calendar year in which the first such articles are marketed, the work may be copied by making further such articles, or doing anything for the purpose of making such articles, and anything may be done in relation to articles so made, without infringing copyright in the work.
- (3) In paragraph (1) “marketed” means sold, let for hire or offered or exposed for sale or hire, in Jersey or elsewhere.

*Works in electronic form***84 Transfer of copies of works in electronic form**

- (1) This Article applies where a copy of a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work, or to adapt it or make copies of an adaptation, in connection with his or her use of it.
- (2) If there are no express terms –
  - (a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer; or
  - (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,anything which the purchaser was allowed to do may also be done without infringement of copyright by a transferee, but any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall be treated as an infringing copy for all purposes after the transfer.
- (3) The same applies where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.
- (4) This Article also applies on a subsequent transfer, with the substitution for references in paragraph (2) to the purchaser of references to the subsequent transferor.

*Miscellaneous: literary, dramatic, musical and artistic works***85 Anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author**

- (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when –
  - (a) it is not possible by reasonable inquiry to ascertain the identity of the author; and
  - (b) it is reasonable to assume –
    - (i) that copyright has expired, or
    - (ii) that the author died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.
- (2) Paragraph (1)(b)(ii) does not apply in relation to –
  - (a) a work in which States Assembly copyright, States copyright or Crown copyright subsists; or
  - (b) a work in which copyright originally vested by virtue of Article 188 and in respect of which an Order under that Article specifies a copyright period longer than 70 years.
- (3) In relation to a work of joint authorship –

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

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

- (1) Where a record of spoken words is made, in writing or otherwise, for the purpose of –
  - (a) reporting current events; or
  - (b) communicating to the public the whole or part of the work,it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it (or to copy the record, or any of the material, and use the copy) for that purpose, if the conditions in paragraph (2) are met.
- (2) The conditions referred to in paragraph (1) are that –
  - (a) the record is a direct record of the spoken words and is not taken from a previous record or from a broadcast;
  - (b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;
  - (c) the use made of the record or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and
  - (d) the use is by or with the authority of a person who is lawfully in possession of the record.

## **87 Public reading or recitation**

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

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

- (1) Where an article on a scientific or technical subject is published in a periodical accompanied by an abstract indicating the contents of the article, it is not an infringement of copyright in the abstract, or in the article, to copy the abstract or issue copies of it to the public.
- (2) This Article does not apply if or to the extent that there is a licensing scheme notified for the purposes of this Article in accordance with Article 180.

**89 Recordings of folk-songs**

- (1) A sound recording of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body without infringing any copyright in the words as a literary work or in the accompanying musical work, provided the conditions in paragraph (2) are met.
- (2) The conditions referred to in paragraph (1) are that –
  - (a) the words are unpublished and of unknown authorship at the time the recording is made;
  - (b) the making of the recording does not infringe any other copyright; and
  - (c) its making is not prohibited by any performer.
- (3) Copies of a sound recording made in reliance on paragraph (1) and included in an archive maintained by a designated body may, if the prescribed conditions are met, be made and supplied by the archivist without infringing copyright in the recording or the works included in it.
- (4) The prescribed conditions shall include the following –
  - (a) that copies are only supplied to persons satisfying the archivist that they require them for the purposes of research or private study and will not use them for any other purpose; and
  - (b) that no person is furnished with more than one copy of the same recording.
- (5) In this Article “designated” means designated for the purposes of this Article by Order of the Minister, who shall not designate a body unless satisfied that it is not established or conducted for profit.

**90 Representation of certain artistic works on public display**

- (1) This Article applies to –
  - (a) buildings; and
  - (b) sculptures, models for buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.
- (2) The copyright in such a work is not infringed by –
  - (a) making a graphic work representing it;
  - (b) making a photograph or film of it; or
  - (c) making a broadcast of a visual image of it.
- (3) Nor is the copyright infringed by anything done in relation to copies of, or the communication to the public of, anything whose making was, by virtue of this Article, not an infringement of the copyright.

**91 Advertisement of sale of artistic work**

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

- (2) Where a copy which would otherwise be an infringing copy is made in accordance with this Article but is subsequently dealt with for any other purpose, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright, for all subsequent purposes.
- (3) In paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire, exhibited in public, distributed or communicated to the public.

## **92 Making of subsequent works by same artist**

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

## **93 Reconstruction of buildings**

Anything done for the purposes of reconstructing a building does not infringe any copyright –

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

### *Miscellaneous: films and sound recordings*

## **94 Films: acts permitted on assumptions as to expiry of copyright, etc.**

- (1) Subject to paragraph (2), copyright in a film is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when –
  - (a) it is not possible by reasonable inquiry to ascertain the identity of any of the persons referred to in Article 27(2)(a) to (d); and
  - (b) it is reasonable to assume –
    - (i) that copyright has expired, or
    - (ii) that the last to die of those persons died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.
- (2) Paragraph (1)(b)(ii) does not apply in relation to a film in which States Assembly copyright, States copyright or Crown copyright subsists.

## **95 Playing of sound recordings for purposes of club, society, etc.**

- (1) It is not an infringement of the copyright in a sound recording to play it as part of the activities of, or for the benefit of, a club, society or other organization if the conditions in paragraph (2) are met.
- (2) The conditions referred to in paragraph (1) are –

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

*Miscellaneous: broadcasts*

## **96 Incidental recording for purposes of broadcast**

- (1) This Article applies where by virtue of a licence or assignment of copyright a person is authorized to broadcast –
  - (a) a literary, dramatic or musical work, or an adaptation of such a work;
  - (b) an artistic work; or
  - (c) a sound recording or film.
- (2) The person shall by virtue of this Article be treated as licensed by the owner of the copyright in the work to do or authorize any of the following for the purposes of the broadcast –
  - (a) in the case of a literary, dramatic or musical work, or an adaptation of that work, to make a sound recording or film of the work or adaptation;
  - (b) in the case of an artistic work, to take a photograph or make a film of the work;
  - (c) in the case of a sound recording or film, to make a copy of it.
- (3) That licence is subject to the condition that the recording, film, photograph or copy in question –
  - (a) shall not be used for any other purpose; and
  - (b) shall be destroyed within 28 days of being first used for broadcasting the work.
- (4) A recording, film, photograph or copy made in accordance with this Article shall be treated as an infringing copy –
  - (a) for the purposes of any use in breach of the condition mentioned in paragraph (3)(a); and
  - (b) for all purposes after that condition or the condition mentioned in paragraph (3)(b) is broken.

## **97 Recording for purposes of supervision and control of broadcasts and other services**

- (1) Copyright is not infringed by the making or use by the British Broadcasting Corporation, for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.
- (2) Copyright is not infringed by anything done in pursuance of –
  - (a) section 167(1) of the Broadcasting Act 1990 or section 115(4) or (6) or 117 of the Broadcasting Act 1996;

- (b) a condition which, by virtue of section 334(1) of the Communications Act 2003, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996;
    - (c) a direction given under section 109(2) of the Broadcasting Act 1990; or
    - (d) section 334(3) of the Communications Act 2003.
  - (3) The rights conferred by this Part are not infringed by the use by OFCOM in connection with the performance of any of their functions under –
    - (a) the Broadcasting Act 1990;
    - (b) the Broadcasting Act 1996; or
    - (c) the Communications Act 2003,of –
    - (i) any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
    - (ii) any existing material which is transferred to them by a scheme made under section 30 of the Communications Act 2003.
  - (4) In paragraph (3) –
    - “existing material” means –
      - (a) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996;
      - (b) any recording or transcript which was provided to the Broadcasting Standards Commission under section 115(4) or (6) or 116(5) of the Broadcasting Act 1996;
- “OFCOM” means the Office of Communications established under the Communications Act 2003 as it has effect in the United Kingdom.

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

- (1) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or in any work included in it.
- (2) Where a copy which would otherwise be an infringing copy is made in accordance with this Article but is subsequently dealt with –
  - (a) it shall be treated as an infringing copy for the purposes of that dealing; and
  - (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.
- (3) In paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

**99 Photographs of broadcasts**

- (1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any copyright in the broadcast or in any film included in it.
- (2) Where a copy which would otherwise be an infringing copy is made in accordance with this Article but is subsequently dealt with –
  - (a) it shall be treated as an infringing copy for the purposes of that dealing; and
  - (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.
- (3) In paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

**100 Free public showing or playing of broadcast**

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

**101 Reception of wireless broadcast and re-transmission by cable**

- (1) This Article applies where a wireless broadcast made from a place in Jersey is received and immediately re-transmitted by cable.

- (2) The copyright in the broadcast is not infringed if and to the extent that the broadcast is made for reception in the area in which it is re-transmitted by cable and forms part of a qualifying service.
- (3) The copyright in any work included in the broadcast is not infringed if and to the extent that the broadcast is made for reception in the area in which it is transmitted by cable, but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted by cable shall be taken into account in assessing the damages for that infringement.
- (4) In this Article “qualifying service” means, subject to paragraph (5), any of the following services –
  - (a) a regional or national Channel 3 service;
  - (b) Channel 4;
  - (c) the teletext service referred to in section 49(2) of the Broadcasting Act 1990;
  - (d) the television broadcasting services and teletext service of the British Broadcasting Corporation,and expressions used in this paragraph have the same meaning as in Part I of the Broadcasting Act 1990.
- (5) The Minister may by Order amend paragraph (4) so as to add any service to, or remove any service from, the definition of “qualifying service”.
- (6) The Minister may also by Order –
  - (a) provide that in specified cases paragraph (3) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that paragraph; or
  - (b) exclude the application of that paragraph in relation to broadcasts of a specified description made as mentioned in that paragraph.
- (7) In this Article references to re-transmission by cable include the transmission of microwave energy between terrestrial fixed points.

## **102 Provision of sub-titled copies of broadcast**

- (1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make copies of broadcasts and issue copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them.
- (2) In paragraph (1) “designated body” means a body designated for the purposes of this Article by Order of the Minister, who shall not designate a body unless he or she is satisfied that it is not established or conducted for profit.
- (3) This Article does not apply if, or to the extent that, there is a licensing scheme notified, for the purposes of this Article, in accordance with Article 180.

## **103 Recording for archival purposes**

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

body without thereby infringing any copyright in the broadcast or in any work included in it.

- (2) In paragraph (1) “designated” means designated for the purposes of this Article by Order of the Minister, who shall not designate a body unless he or she is satisfied that it is not established or conducted for profit.

### *Adaptations*

## **104 Adaptations**

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

## **CHAPTER 5 – MORAL RIGHTS**

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

- (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right to be identified as the author or director of the work in the circumstances mentioned in this Article, but the right is not infringed unless it has been asserted in accordance with Article 106.
- (2) The author of a literary work (other than words intended to be sung or spoken with music) or a dramatic work has the right to be identified whenever –
- (a) the work is published commercially, performed in public or communicated to the public; or
  - (b) copies of a film or sound recording including the work are issued to the public, and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.
- (3) The author of a musical work, or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified whenever –
- (a) the work is published commercially;
  - (b) copies of a sound recording of the work are issued to the public; or
  - (c) a film of which the sound track includes the work is shown in public or copies of that film are issued to the public,
- and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.
- (4) The author of an artistic work shall have the right to be identified whenever –
- (a) the work is published commercially or exhibited in public, or a visual image of it is communicated to the public;

- (b) a film including a visual image of the work is shown in public or copies of such a film are issued to the public; or
  - (c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it, or of a photograph of it, are issued to the public.
- (5) The author of a work of architecture in the form of a building also has the right to be identified on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed.
- (6) The director of a film has the right to be identified whenever the film is shown in public or communicated to the public or copies of the film are issued to the public.
- (7) The right of the author or director under this Article 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, showing or communication to the public in question,and the identification must in each case be clear and reasonably prominent.
- (8) If the author or director in asserting his or her right to be identified specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.
- (9) This Article has effect subject to Article 107.

## **106 Requirement that right conferred by Article 105 be asserted**

- (1) A person does not infringe the right conferred by Article 105 by doing any of the acts mentioned in that Article unless the right has been asserted in accordance with this Article so as to bind him or her in relation to that act.
- (2) The right may be asserted generally, or in relation to any specified act or description of acts –
  - (a) on an assignment of copyright in the work, by including in the instrument effecting the assignment a statement that the author or director asserts in relation to that work his or her right to be identified; or
  - (b) by instrument in writing signed by the author or director.
- (3) The right may also be asserted in relation to the public exhibition of an artistic work –
  - (a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or her or under his or her direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached; or
  - (b) by including in a licence by which the author or other first owner of copyright authorizes the making of copies of the work a statement signed by or on behalf

of the person granting the licence that the author asserts his or her right to be identified in the event of the public exhibition of a copy made in pursuance of the licence.

- (4) The persons bound by an assertion of the right under paragraph (2) or (3) are –
  - (a) in the case of an assertion under paragraph (2)(a), the assignee and anyone claiming through him or her, whether or not he or she has notice of the assertion;
  - (b) in the case of an assertion under paragraph (2)(b), anyone to whose notice the assertion is brought;
  - (c) in the case of an assertion under paragraph (3)(a), anyone into whose hands that original or copy comes, whether or not the identification is still present or visible; and
  - (d) in the case of an assertion under paragraph (3)(b), the licensee and anyone into whose hands a copy made in pursuance of the licence comes, whether or not he or she has notice of the assertion.
- (5) In an action for infringement of the right the Court shall, in considering remedies, take into account any delay in asserting the right.

## **107 Exceptions to right conferred by Article 105**

- (1) The right conferred by Article 105 is subject to the following exceptions.
- (2) The right does not apply in relation to the following descriptions of work –
  - (a) a computer program;
  - (b) the design of a typeface;
  - (c) any computer-generated work.
- (3) The right does not apply to anything done by or with the authority of the copyright owner where copyright in the work originally vested in the author's or director's employer by virtue of Article 24(2).
- (4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright –
  - (a) Article 47, so far as it relates to the reporting of current events by means of a sound recording, film or broadcast;
  - (b) Article 48, 55(3), 68, 69(1) or (2), 79, 80, 85 or 94.
- (5) The right does not apply in relation to any work made for the purpose of reporting current events.
- (6) The right does not apply in relation to the publication in –
  - (a) a newspaper, magazine or similar periodical; or
  - (b) an encyclopaedia, dictionary, yearbook or other collective work of reference, of a literary, dramatic, musical or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.
- (7) The right does not apply in relation to –

- (a) a work in which States Assembly copyright, States copyright or Crown copyright subsists; or
  - (b) a work in which copyright originally subsisted by virtue of Article 188,
- unless the author or director has previously been so identified in or on published copies of the work.

## **108 Right to object to derogatory treatment of work**

- (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right in the circumstances mentioned in this Article not to have his or her work subjected to derogatory treatment.
- (2) For the purposes of this Article –
  - (a) “treatment” of a work means any addition to, deletion from or alteration to or adaptation of the work, other than –
    - (i) a translation of a literary or dramatic work, or
    - (ii) an arrangement or transcription of a musical work involving no more than a change of key or register; and
  - (b) the treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director,

and in the following provision of this Article references to a derogatory treatment of a work shall be construed accordingly.
- (3) In the case of a literary, dramatic or musical work the right is infringed by a person who –
  - (a) publishes commercially, performs in public or communicates to the public a derogatory treatment of the work; or
  - (b) issues to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.
- (4) In the case of an artistic work the right is infringed by a person who –
  - (a) publishes commercially or exhibits in public a derogatory treatment of the work, or communicates to the public a visual image of a derogatory treatment of the work;
  - (b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of such a film; or
  - (c) in the case of –
    - (i) a work of architecture in the form of a model for a building,
    - (ii) a sculpture, or
    - (iii) a work of artistic craftsmanship,issues to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.
- (5) Paragraph (4) does not apply to a work of architecture in the form of a building, but where the author of such a work is identified on the building and it is the subject of

derogatory treatment, he or she has the right to require the identification to be removed.

- (6) In the case of a film, the right is infringed by a person who –
  - (a) shows in public or communicates to the public a derogatory treatment of the film; or
  - (b) issues to the public copies of a derogatory treatment of the film.
- (7) The right conferred by this Article extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.
- (8) This Article has effect subject to Articles 109 and 110.

### **109 Exceptions to right conferred by Article 108**

- (1) The right conferred by Article 108 is subject to the exceptions referred to in paragraphs (2) to (6).
- (2) The right does not apply to a computer program or to any computer-generated work.
- (3) The right does not apply in relation to any work made for the purpose of reporting current events.
- (4) The right does not apply in relation to the publication in –
  - (a) a newspaper, magazine or similar periodical; or
  - (b) an encyclopaedia, dictionary, yearbook or other collective work of reference, of a literary, dramatic, musical or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication; nor does the right apply in relation to any subsequent exploitation elsewhere of such a work without any modification of the published version.
- (5) The right is not infringed by an act which by virtue of Article 85 or 94 would not infringe copyright.
- (6) The right is not infringed by anything done for the purpose of –
  - (a) avoiding the commission of an offence;
  - (b) complying with a duty imposed by or under an enactment; or
  - (c) in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste or decency or which is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling,

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

- (7) For the purposes of paragraph (6), “sufficient disclaimer”, in relation to an act capable of infringing the right conferred by Article 108, 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.

## **110 Qualification of right conferred by Article 108 in certain cases**

- (1) This Article applies to –
  - (a) works in which copyright originally vested in the author's or director's employer by virtue of Article 24(2);
  - (b) works in which States Assembly copyright, States copyright or Crown copyright subsists; and
  - (c) works in which copyright originally subsisted by virtue of Article 188.
- (2) The right conferred by Article 108 does not apply to anything done in relation to such a work by or with the authority of the copyright owner unless the author or director –
  - (a) is identified at the time of the relevant act; or
  - (b) has previously been identified in or on published copies of the work,and where in such a case the right does apply, it is not infringed if there is a sufficient disclaimer.
- (3) For the purposes of paragraph (2), "sufficient disclaimer" has the same meaning as in Article 109(7).

## **111 Infringement of right conferred by Article 108 by possessing or dealing with infringing article**

- (1) The right conferred by Article 108 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 distributes; or
  - (d) distributes otherwise than in the course of a business so as to affect prejudicially the honour or reputation of the author or director,an article which is, and which he or she knows or has reason to believe is, an infringing article.
- (2) An "infringing article" means a work or a copy of a work which –
  - (a) has been subjected to derogatory treatment within the meaning of Article 108; and
  - (b) has been or is likely to be the subject of any of the acts mentioned in that Article in circumstances infringing that right.

## **112 False attribution of work**

- (1) A person has the right in the circumstances mentioned in this Article –

- (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 Article, an “attribution”, in relation to such a work, means a statement (express or implied) as to who is the author or director.
- (2) The right is infringed by a person who –
  - (a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution; or
  - (b) exhibits in public an artistic work, or a copy of an artistic work, in or on which there is a false attribution.
- (3) The right is also infringed by a person who –
  - (a) in the case of a literary, dramatic, or musical work, performs the work in public or communicates it to the public as being the work of a person; or
  - (b) in the case of a film, shows it in public or communicates it to the public as being directed by a person,knowing or having reason to believe that the attribution is false.
- (4) The right is also infringed by the issue to the public or public display of material containing a false attribution in connection with any of the acts mentioned in paragraph (2) or (3).
- (5) The right is also infringed by a person who in the course of a business –
  - (a) possesses or deals with a copy of a work of any of the descriptions mentioned in paragraph (1) in or on which there is a false attribution; or
  - (b) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it,knowing or having reason to believe that there is such an attribution and that it is false.
- (6) In the case of an artistic work the right is infringed by a person who in the course of a business –
  - (a) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author; or
  - (b) deals with a copy of such a work as being a copy of the unaltered work of the author,knowing or having reason to believe that that is not the case.
- (7) References in this Article to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public, or distributing.
- (8) This Article applies where, contrary to the fact –
  - (a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person; or
  - (b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,as it applies where the work is falsely attributed to a person as author.

**113 Right to privacy of certain photographs and films**

- (1) A person who for private and domestic purposes commissions the taking of a photograph or the making of a film has, where copyright subsists in the resulting work, the right not to have –
  - (a) copies of the work issued to the public;
  - (b) the work exhibited or shown in public; or
  - (c) the work communicated to the public,and, except as mentioned in paragraph (2), a person who does or authorizes the doing of any of those acts infringes that right.
- (2) The right is not infringed by an act which by virtue of Article 48, 68, 69, 73, 85 or 94 would not infringe copyright in the work.

**114 Duration of moral rights**

- (1) The rights conferred by Articles 105, 108 and 113 continue to subsist so long as copyright subsists in the work.
- (2) The right conferred by Article 112 continues to subsist until 20 years after a person's death.

**115 Consent and waiver of moral rights**

- (1) It is not an infringement of any of the rights conferred by this Chapter to do any act to which the person entitled to the right has consented.
- (2) Any of the rights conferred by this Chapter may be waived by instrument in writing signed by the person giving up the right.
- (3) A waiver –
  - (a) may relate to a specific work, to works of a specified description or to works generally, and may relate to existing or future works; and
  - (b) may be conditional or unconditional and may be expressed to be subject to revocation,and if made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it shall be presumed to extend to his or her licensees and successors in title unless a contrary intention is expressed.
- (4) Nothing in this Chapter shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to any of the rights mentioned in paragraph (1).

**116 Application of moral rights to joint works**

- (1) The right conferred by Article 105 is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author and must be asserted in accordance with Article 106 by each joint author in relation to himself or herself.

- (2) The right conferred by Article 108 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 under Article 115 of those rights by one joint author does not affect the rights of the other joint authors.
- (4) The right conferred by Article 112 is infringed, in the circumstances mentioned in that Article –
  - (a) by any false statement as to the authorship of a work of joint authorship; and
  - (b) by the false attribution of joint authorship in relation to a work of sole authorship,and such a false attribution infringes the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed.
- (5) Paragraphs (1) to (4) also apply (with any necessary adaptations) in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship.
- (6) For the purposes of paragraph (5), a film is “jointly directed” if it is made by the collaboration of 2 or more directors and the contribution of each director is not distinct from that of the other director or directors.
- (7) The right conferred by Article 113 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 Article 115 by one of them does not affect the rights of the others.

## **117 Application of moral rights to parts of works**

- (1) The rights conferred by Articles 105 and 113 apply in relation to the whole or any substantial part of a work.
- (2) The right conferred by Articles 108 and 112 apply in relation to the whole or any part of a work.

## **CHAPTER 6 – DEALINGS IN COPYRIGHT WORKS**

## **118 Assignment and licences of copyright**

- (1) Copyright is transmissible by assignment, by testamentary disposition or by operation of law, as moveable property.
- (2) An assignment or other transmission of copyright may be partial, that is, limited so as to apply –
  - (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do;
  - (b) to part, but not the whole, of the period for which the copyright is to subsist.

- (3) An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor.
- (4) A licence granted by a copyright owner is binding on every successor in title to his or her interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence, or a person deriving title from such a purchaser and references in this Part to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

## **119 Prospective ownership of copyright**

- (1) Where by an agreement made in relation to future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person, then if, on the copyright coming into existence, the assignee or another person claiming under him 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 the title by virtue of this paragraph.
- (2) In this Part –
  - “future copyright” means copyright which will or may come into existence in respect of a future work or class of works or on the occurrence of a future event;
  - “prospective owner” shall be construed accordingly and includes a person who is prospectively entitled to copyright by virtue of such an agreement as is mentioned in paragraph (1).
- (3) 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 that purchaser, and references in this Part to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

## **120 Exclusive licences**

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.

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

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

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

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

**122 Presumption of transfer of rental right in case of film production agreement**

- (1) Where an agreement concerning film production is concluded between an author and a film producer, the author shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a copy of the author's work in the film.
- (2) In this Article "author" means an author, or prospective author, of a literary, dramatic, musical or artistic work.
- (3) Paragraph (1) does not apply to any rental right in relation to the film arising by virtue of the inclusion in the film of the screenplay, the dialogue or music specifically created for and used in the film.
- (4) Where this Article applies, the absence of signature by or on behalf of the author does not exclude the operation of Article 119(1).
- (5) The reference in paragraph (1) to an agreement concluded between an author and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.
- (6) Article 123 applies where there is a presumed transfer by virtue of this Article as in the case of an actual transfer.

*Right to equitable remuneration where rental right transferred***123 Right to equitable remuneration where rental right transferred**

- (1) Where an author to whom this Article applies has transferred his or her rental right concerning a sound recording or a film to the producer of the sound recording or film, he or she retains the right to equitable remuneration for the rental.
- (2) The authors to whom this Article applies are –
  - (a) the author of a literary, dramatic, musical or artistic work; and
  - (b) the principal director of a film.
- (3) The right to equitable remuneration under this Article may not be assigned by the author except to a collecting society for the purpose of enabling it to enforce the right on his or her behalf.
- (4) Notwithstanding paragraph (3), the right to equitable remuneration is transmissible by testamentary disposition or by operation of law as moveable property and may be assigned or further transmitted by any person into whose hands it passes.
- (5) Equitable remuneration under this Article is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his or hers.
- (6) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to Article 124.
- (7) An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this Article.
- (8) References in this Article to the transfer of a rental right by one person to another include any arrangement having that effect, whether made by them directly or through intermediaries.

- (9) In this Article a “collecting society” means a society or other organization which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration under this Article on behalf of more than one author.

## **124 Equitable remuneration: reference of amount to licensing authority**

- (1) In default of agreement as to the amount payable by way of equitable remuneration under Article 123, the person by or to whom it is payable may apply to the licensing authority to determine the amount payable.
- (2) A person by or to whom equitable remuneration is payable under that Article may also apply to the licensing authority –
- (a) to vary any agreement as to the amount payable; or
  - (b) to vary any previous determination of the licensing authority as to that matter,
- but except with the permission of the licensing authority no such application may be made within 12 months from the date of a previous determination.
- (3) An order made on an application under paragraph (2) has effect from the date on which it is made or such later date as may be specified by the licensing authority.
- (4) On an application under this Article the licensing authority shall consider the matter and make any order as to the method of calculating and paying equitable remuneration as the licensing authority may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the author to the film or sound recording.
- (5) Remuneration shall not be considered inequitable merely because it was paid by way of a single payment or at the time of the transfer of the rental right.
- (6) An agreement is of no effect in so far as it purports to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the licensing authority under this Article.

### *Moral rights*

## **125 Moral rights not assignable**

The rights conferred by Chapter 5 are not assignable.

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

- (1) On the death of a person entitled to the right conferred by Article 105, 108 or 113 –
- (a) the right passes to such person as he or she may, by testamentary disposition, specifically direct;
  - (b) if there is no such direction but the copyright in the work in question forms part of his or her estate, the right passes to the person to whom the copyright passes; and
  - (c) if, or to the extent that, the right does not pass under sub-paragraph (a) or (b) it is exercisable by –

- (i) his or her executors, if he or she dies testate as to his or her moveable estate, or
  - (ii) his or her administrators, if he or she dies intestate as to his or her moveable estate.
- (2) Where copyright forming part of a person's estate passes in part to one person and in part to another, as for example where a bequest is limited so as to apply –
  - (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do or authorize; or
  - (b) to part, but not the whole, of the period for which the copyright is to subsist,any right which passes with the copyright by virtue of paragraph (1) shall be correspondingly divided.
- (3) Where by virtue of paragraph (1)(a) or (b) a right becomes exercisable by more than one person –
  - (a) it may, in the case of the right conferred by Article 105, be asserted by any of them;
  - (b) it is, in the case of the right conferred by Article 108 or 113, 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
  - (c) any waiver of the right in accordance with Article 115 by one of them does not affect the rights of the others.
- (4) A consent or waiver previously given or made binds any person to whom a right passes by virtue of paragraph (1).
- (5) Any infringement after a person's death of the right conferred by Article 112 is actionable by –
  - (a) his or her executors, if he or she dies testate as to his or her moveable estate; or
  - (b) his or her administrators, if he or she dies intestate as to his or her moveable estate.
- (6) Any damages recovered by executors or administrators by virtue of this Article in respect of an infringement after a person's death shall devolve as part of that person's estate as if the right of action had subsisted and been vested in him or her immediately before his or her death.

## CHAPTER 7 – REMEDIES FOR INFRINGEMENT

### *Rights and remedies of copyright owner*

#### **127 Infringement actionable by copyright owner**

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

- (3) This Article has effect subject to the provisions of this Chapter.

## **128 Damages in action for infringement of copyright**

- (1) Where, in an action for infringement of copyright, it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him or her, but without prejudice to any other remedy.
- (2) The Court may, in an action for infringement of copyright, having regard to all the circumstances, and in particular to –
- (a) the flagrancy of the infringement; and
  - (b) any benefit accruing to the defendant by reason of the infringement,
- award such additional damages as the justice of the case may require.

## **129 Order for delivery up of infringing copies, etc.**

- (1) Where a person –
- (a) has an infringing copy of a work in his or her possession, custody or control in the course of a business; or
  - (b) has in his or her possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it has been or is to be used to make infringing copies,
- the owner of the copyright in the work may apply to the Court for an order that the infringing copy or article be delivered up to him or her or to any other person the Court may direct.
- (2) An application shall not be made after the end of the period specified in Article 130.
- (3) An Order shall not be made unless the Court makes, or it appears to the Court that there are grounds for making, an order under Article 143.
- (4) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this Article shall, if an order under Article 143 is not made, retain it pending the making of an order, or the decision not to make an order, under that Article.
- (5) Nothing in this Article affects any other power of the Court.

## **130 Period after which remedy of delivery up not available under Article 129**

- (1) Subject to paragraphs (2) and (3), an application for an order under Article 129 may not be made after the end of the period of 10 years from the date on which the infringing copy or article in question was made.
- (2) If during the whole or part of the period specified in paragraph (1) the copyright owner is –
- (a) under a disability; or

- (b) prevented by fraud or concealment from discovering the facts entitling him or her to apply for an order,

an application may be made at any time before the end of the period of 10 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.

- (3) For the purposes of paragraph (2) a person shall be treated as under a disability while he or she is under the age of 18 years or is of unsound mind.

### **131 Right to seize infringing copies, etc.**

- (1) An infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under Article 129, may be seized and detained by him or her or a person authorized by him or her.
- (2) The right to seize and detain conferred by paragraph (1) is exercisable subject to the following conditions and is subject to any decision of the Court under Article 143.
- (3) Before anything is seized under this Article notice of the time and place of the proposed seizure must be given to the Connétable of the parish in which the proposed seizure is to take place.
- (4) A person may for the purpose of exercising the right conferred by this Article enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at his or her permanent or regular place of business, and may not use any force.
- (5) At the time when anything is seized under this Article there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.
- (6) In this Article “premises” includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft.

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

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

- (1) An exclusive licensee has, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.
- (2) The exclusive licensee’s rights and remedies are concurrent with those of the copyright owner, and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.
- (3) In an action brought by an exclusive licensee by virtue of this Article 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.

**133 Certain infringements actionable by a non-exclusive licensee**

- (1) A non-exclusive licensee may bring an action for infringement of copyright if –
  - (a) the infringing act was directly connected to a prior licensed act of the licensee; and
  - (b) the licence –
    - (i) is in writing and is signed by or on behalf of the copyright owner, and
    - (ii) expressly grants the non-exclusive licensee a right of action under this Article.
- (2) In an action brought under this Article, the non-exclusive licensee shall have the same rights and remedies available to him or her as the copyright owner would have had if he or she had brought the action.
- (3) The rights granted under this Article are concurrent with those of the copyright owner and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.
- (4) In an action brought by a non-exclusive licensee by virtue of this Article 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.
- (5) Paragraphs (1) to (4) of Article 134 shall apply to a non-exclusive licensee who has a right of action by virtue of this Article as they apply to an exclusive licensee.
- (6) In this Article a “non-exclusive licensee” means the holder of a licence authorizing the licensee to exercise a right which remains exercisable by the copyright owner.

**134 Exercise of concurrent rights**

- (1) Where an action for infringement of copyright brought by the copyright owner or, as the case may be, an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the copyright owner or the exclusive licensee may not, without the leave of the Court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.
- (2) A copyright owner or exclusive licensee who is added as a defendant in pursuance of paragraph (1) is not liable for any costs in the action unless he or she takes part in the proceedings.
- (3) Paragraphs (1) and (2) do not affect the granting of the interlocutory relief on an application by a copyright owner or exclusive licensee alone.
- (4) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action –
  - (a) the Court shall in assessing damages take into account –
    - (i) the terms of the licence, and
    - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
  - (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and

- (c) the Court shall, if an account of profits is directed, apportion the profits between them as the Court considers just, subject to any agreement between them,

and these provisions apply whether or not the copyright owner and the exclusive licensee are both parties to the action.

- (5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under Article 129 or exercising the right conferred by Article 131, and the Court may on the application of the licensee make such order under Article 129 or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right conferred by Article 131, as it thinks fit having regard to the terms of the licence.

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

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

- (1) An infringement of a right conferred by Chapter 5 is actionable as a breach of statutory duty owed to the person entitled to the right.
- (2) In proceedings for infringement of the right conferred by Article 108 the Court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the Court, dissociating the author or director from the treatment of the work.

#### *Presumptions in proceedings*

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

- (1) The following presumptions apply in proceedings brought by virtue of this Chapter with respect to a literary, dramatic, musical or artistic work.
- (2) Where a name purporting to be that of the author appeared on copies of the work as published or on the work when it was made, the person whose name appeared shall be presumed, until the contrary is proved –
  - (a) to be the author of the work; and
  - (b) to have made it in circumstances not falling within Article 24(2), 182, 183, 184 or 188.
- (3) In the case of a work alleged to be a work of joint authorship, paragraph (2) applies in relation to each person alleged to be one of the authors.
- (4) Where no name purporting to be that of the author appeared as mentioned in paragraph (2) but –
  - (a) the work qualifies for copyright protection by virtue of Article 22; and
  - (b) a name purporting to be that of the publisher appeared on copies of the work as first published,

the person whose name appeared shall be presumed, until the contrary is proved, to have been the owner of the copyright at the time of publication.

- (5) If the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed, in the absence of evidence to the contrary –
- (a) that the work is an original work; and
  - (b) that the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

### **137 Presumptions relevant to sound recordings, films and computer programs**

- (1) In proceedings brought by virtue of this Chapter with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating –
- (a) that a named person was the owner of copyright in the recording at the date of issue of the copies; or
  - (b) that the recording was first published in a specified year or in a specified country,
- the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.
- (2) In proceedings brought by virtue of this Chapter with respect to a film, where copies of the film as issued to the public bear a statement –
- (a) that a named person was the director or producer of the film;
  - (b) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film;
  - (c) that a named person was the owner of the copyright in the film at the date of issue of the copies; or
  - (d) that the film was first published in a specified year or in a specified country,
- the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.
- (3) In proceedings brought by virtue of this Chapter with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement –
- (a) that a named person was the owner of copyright in the program at the date of issue of the copies; or
  - (b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form in a specified year,
- the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.
- (4) The presumptions in paragraphs (1), (2) and (3) apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.

- (5) In proceedings brought by virtue of this Chapter with respect to a film, where the film as shown in public or communicated to the public bears a statement –
- (a) that a named person was the director or producer of the film;
  - (b) that a named person was the principal director of the film, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film; or
  - (c) that a named person was the owner of copyright in the film immediately after it was made,
- the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.
- (6) The presumption in paragraph (5) applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public or communicated to the public.
- (7) For the purposes of this Article, a statement that a person was the director of a film shall be taken, unless a contrary indication appears, as meaning that he or she was the principal director of the film.

### **138 Presumptions relevant to works subject to Crown or States copyright**

In proceedings brought by virtue of this Chapter with respect to a literary, dramatic or musical work in which States Assembly copyright, States copyright or Crown copyright subsists, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct in the absence of evidence to the contrary.

## *Offences*

### **139 Offences of making or dealing with infringing articles, etc.**

- (1) A person shall be guilty of an offence who, without the licence of the copyright owner –
- (a) makes for sale or hire;
  - (b) imports into Jersey otherwise than for his or her private and domestic use;
  - (c) possesses in the course of a business with a view to committing any act infringing the copyright;
  - (d) in the course of a business –
    - (i) sells or lets for hire,
    - (ii) offers or exposes for sale or hire,
    - (iii) exhibits in public, or
    - (iv) distributes; or
  - (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

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

- (2) A person shall be guilty of an offence who –
- (a) makes an article specifically designed or adapted for making copies of a particular copyright work; or
  - (b) has such an article in his or her possession,
- knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.
- (3) A person who infringes copyright in a work by communicating the work to the public –
- (a) in the course of a business; or
  - (b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,
- shall be guilty of an offence if he or she knows or has reason to believe that, by doing so, he or she is infringing copyright in that work.
- (4) Where copyright is infringed (otherwise than by reception of a communication to the public) by –
- (a) the public performance of a literary, dramatic or musical work; or
  - (b) the playing or showing in public of a sound recording or film,
- any person who caused the work to be so performed, played or shown shall be guilty of an offence if he or she knew or had reason to believe that copyright would be infringed.
- (5) A person guilty of an offence against paragraph (1)(a), (b), (d)(iv) or (e) or paragraph (3) shall be liable to imprisonment for a term of 10 years and to a fine.
- (6) A person guilty of any other offence against this Article shall be liable to imprisonment for a term of 6 months and to a fine of level 3 on the standard scale.<sup>13</sup>
- (7) Articles 136 to 138 do not apply to proceedings for an offence against this Article, but without prejudice to their application in proceedings for an order under Article 140.
- (8) Where an offence against this Article committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of –
- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,
- the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (9) Where the affairs of a body corporate are managed by its members, paragraph (8) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

**140 Order for delivery up of infringing copies, etc. in criminal proceedings**

- (1) The court before which proceedings are brought against a person for an offence against Article 139 may, if satisfied that at the time of his or her arrest or charge –
  - (a) the person had in his or her possession, custody or control in the course of a business an infringing copy of a copyright work; or
  - (b) the person had in his or her possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that the article had been or was to be used to make infringing copies,order that the infringing copy or article be delivered up to the copyright owner or to such other person as the court directs.
- (2) For this purpose a person shall be treated as charged with an offence when he or she is orally charged or is served with a summons.
- (3) An order may be made by the court of its own motion or on an application by or on behalf of the Attorney General or by the person presenting the case, and may be made whether or not the person is convicted of the offence, but shall not be made –
  - (a) after the end of the period of 10 years from the date on which the infringing copy or article in question was made; or
  - (b) if it appears to the court unlikely that any order will be made under Article 143.
- (4) An appeal lies to the Court from an order made under this Article by the Magistrate's Court.
- (5) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this Article shall retain it pending the making of an order, or the decision not to make an order, under Article 143.
- (6) Nothing in this Article affects the powers of a court as to forfeiture in criminal proceedings under any other enactment.

*Importation of infringing copies***141 Infringing copies may be treated as prohibited goods**

- (1) The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to the Agent of the Impôts –
  - (a) that he or she is the owner of the copyright in the work; and
  - (b) that he or she requests the Agent of the Impôts, for a period specified in the notice, to treat as prohibited goods printed copies of the work which are infringing copies.
- (2) The period specified in a notice under paragraph (1) shall not exceed 5 years and shall not extend beyond the period for which copyright is to subsist.
- (3) The owner of the copyright in a sound recording or film may give notice in writing to the Agent of the Impôts –
  - (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 Jersey at a time and place specified in the notice; and
  - (c) that he or she requests the Agent of the Impôts to treat the copies as prohibited goods.
- (4) When a notice is in force under this Article the importation of goods to which the notice relates, otherwise than by a person for his or her private and domestic use, shall, subject to paragraphs (5) and (6), be prohibited.
- (5) The Agent of the Impôts may treat as prohibited goods only infringing copies of works which arrive in Jersey –
  - (a) from outside the protected area; or
  - (b) from within the protected area but not having been entered for free circulation.
- (6) This Article does not apply to goods placed in, or expected to be placed in, one of the situations referred to in Article 1(1) of Council Regulation (EC) No. 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, in respect of which an application may be made under Article 5(1) of that Regulation.
- (7) A person shall not, by reason of the prohibition under this Article of the importation of goods, be liable to any penalty other than forfeiture of the goods.

#### **142 Orders supplementing Article 141**

- (1) The Minister for Home Affairs may by Order prescribe the form in which notice is to be given under Article 141 and require a person giving notice –
  - (a) to furnish the Agent of the Impôts with the evidence specified in the Order, either on giving notice or when the goods are imported, or at both those times; and
  - (b) to comply with such other conditions as may be specified in the Order.
- (2) The Order may, in particular, require a person giving such a notice –
  - (a) to pay the prescribed fee, if any;
  - (b) to give such security as may be specified in respect of any liability or expense which the Agent of the Impôts may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained; and
  - (c) to indemnify the Agent of the Impôts against that liability or expense, whether security has been given or not.

#### *Supplementary*

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

- (1) An application may be made to the Court for an order that an infringing copy or other article, delivered up in pursuance of an order under Article 129 or 140 or seized and detained in pursuance of the right conferred by Article 131, shall be –

- (a) forfeited to the copyright owner; or
  - (b) destroyed or otherwise dealt with as the Court may think fit,or for a decision that no such order should be made.
- (2) In considering what order (if any) should be made, the Court shall consider whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his or her interests.
- (3) Provision shall be made by rules of court as to the service of the notice on a person having an interest in the copy or other article, and any such person is entitled –
  - (a) to appear in proceedings for an order under this Article, 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 under this Article shall not take effect until the end of the period specified by rules of court within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the appeal.
- (5) Where there is more than one person interested in a copy or other article, the Court shall make such order as it thinks just and may (in particular) direct that the copy or article be sold, or otherwise dealt with, and the proceeds divided.
- (6) If the Court decides that no order should be made under this Article, the person in whose possession, custody or control the copy or other article was before being delivered up or seized is entitled to its return.
- (7) References in this Article to a person having an interest in a copy or other article, include any person in whose favour an order could be made in respect of it under –
  - (a) this Article;
  - (b) Article 321;
  - (c) Article 377; or
  - (d) Article 29(3) of the [Trade Marks \(Jersey\) Law 2000](#).
- (8) The power in the [Royal Court \(Jersey\) Law 1948](#) to make rules of court shall include the power to make rules for the purposes of this Article.

#### **144 Forfeiture of infringing copies, etc.**

- (1) Where there have come into the possession of any person in connection with the investigation or prosecution of a relevant offence –
  - (a) infringing copies of a copyright work; or
  - (b) articles specifically designed or adapted for making copies of a particular copyright work,that person may apply under this Article for an order for the forfeiture of the infringing copies or articles.
- (2) For the purposes of this Article “relevant offence” means –
  - (a) an offence against Article 139; or
  - (b) an offence involving dishonesty or deception.

- (3) An application under this Article may be made –
  - (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the infringing copies or articles, to that court; or
  - (b) where no application for the forfeiture of the infringing copies or articles has been made under sub-paragraph (a), to the Magistrate’s Court.
- (4) On an application under this Article, the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles.
- (5) A court may infer for the purposes of this Article that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (6) Any person aggrieved by an order made under this Article by the Magistrate’s Court, or by a decision by that court not to make such an order, may appeal against that order or decision to the Royal Court.
- (7) An order under this Article may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal or application to state a case.
- (8) Subject to paragraph (9), where any infringing copies or articles are forfeited under this Article they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this Article the court may direct that the infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate.

## CHAPTER 8 – COPYRIGHT LICENSING

### 145 Copyright licensing schemes and licensing bodies

- (1) In this Part a “licensing scheme” means a scheme setting out –
  - (a) the classes of case in which the operator of the scheme, or the person on whose behalf he or she acts, is willing to grant copyright licences; and
  - (b) the terms on which licences would be granted in those classes of case,and for this purpose a “scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.
- (2) In this Part “licensing body” means a society or other organization 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 copyright licences, and whose objects include the granting of licences covering works of more than one author.
- (3) In this Article “copyright licences” means licences to do, or authorize the doing of, any of the acts restricted by copyright.

- (4) References in this Chapter to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only –
  - (a) a single collective work or collective works of which the authors are the same; or
  - (b) works made by, or by employees of, or commissioned by, a single individual, firm, company or group of companies.
- (5) For the purpose of paragraph (4)(b), a group of companies means a holding company and its subsidiaries, within the meaning of Article 2 of the [Companies \(Jersey\) Law 1991](#).

#### **146 Licensing schemes to which Articles 147 to 152 apply**

Articles 147 to 152 apply to licensing schemes which are operated by licensing bodies and cover works of more than one author, so far as they relate to licences for –

- (a) copying the work;
- (b) rental of copies of the work to the public;
- (c) performing, showing or playing the work in public; or
- (d) communicating the work to the public,

and references in those Articles to a licensing scheme shall be construed accordingly.

#### **147 Reference of proposed licensing scheme to licensing authority**

- (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the licensing authority by an organization which claims 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 licensing authority 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 licensing authority decides to entertain the reference the licensing authority shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the licensing authority 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 licensing authority may determine.

#### **148 Reference of licensing scheme to licensing authority**

- (1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and –
  - (a) a person claiming that he or she requires a licence in a case of a description to which the scheme applies; or
  - (b) an organization claiming to be representative of such persons,

that person or organization may refer the scheme to the licensing authority in so far as it relates to cases of that description.

- (2) A scheme which has been referred to the licensing authority under this Article shall remain in operation until proceedings on the reference are concluded.
- (3) The licensing authority shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the licensing authority may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for any period the licensing authority determines.

#### **149 Further reference of scheme to licensing authority**

- (1) Where the licensing authority has on a previous reference of a licensing scheme under Article 147 or 148 or under this Article, made an order with respect to the scheme, then, while the order remains in force –
  - (a) the operator of the scheme;
  - (b) a person claiming that he or she requires a licence in a case of the description to which the order applies; or
  - (c) an organization claiming to be representative of such persons,may refer the scheme again to the licensing authority so far as it relates to cases of that description.
- (2) A licensing scheme shall not, except with the permission of the licensing authority, be referred again to the licensing authority in respect of the same description of cases –
  - (a) within 12 months from the date of the order on the previous reference; or
  - (b) if the order was made so as to be in force for 15 months or less, until the last 3 months before the expiry of the order.
- (3) A scheme which has been referred to the licensing authority under this Article shall remain in operation until proceedings on the reference are concluded.
- (4) The licensing authority shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the licensing authority may determine to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the licensing authority may determine.

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

- (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or 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 licensing authority.
- (2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either –

- (a) has refused to grant him 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 licensing authority.
- (3) A case shall be regarded as excluded from a licensing scheme for the purposes of paragraph (2) if –
  - (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or
  - (b) the case is so similar to those in which the licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.
- (4) If the licensing authority is satisfied that the claim is well-founded, the licensing authority 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 licensing authority 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 licensing authority may determine.

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

- (1) Where the licensing authority has made an order under Article 150 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the licensing authority to review the order.
- (2) An application shall not be made under paragraph (1), except with the permission of the licensing authority –
  - (a) within 12 months from the date of the order, or of the decision on a previous application under this Article; or
  - (b) if the order was made so as to be in force for 15 months or less, or, as a result of the decision on a previous application under this Article, is due to expire within 15 months of that decision, until the last 3 months before the expiry date.
- (3) The licensing authority shall on an application for review confirm or vary the authority's order as the licensing authority 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.

#### **152 Effect of order of licensing authority as to licensing scheme**

- (1) A licensing scheme which has been confirmed or varied by the licensing authority –
  - (a) under Article 147; or
  - (b) under Article 148 or 149,

shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

- (2) While the order is in force a person who, in a case of a class to which the order applies –
  - (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained; and
  - (b) complies with the other terms applicable to such a licence under the scheme, shall be in the same position, as regards infringement of copyright, as if he 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 licensing authority may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made, or if later, on which the scheme came into operation.
- (4) If a direction under paragraph (3) is made –
  - (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and
  - (b) the reference in paragraph (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.
- (5) A direction under paragraph (3) may not be made where paragraph (6) applies.
- (6) An order of the licensing authority under Article 148 or 149 made with respect to a scheme which is notified for any purpose in accordance with Article 180 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the licensing authority.
- (7) Where the licensing authority has made an order under Article 150 and the order remains in force, the person in whose favour the order is made shall if he or she –
  - (a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained; and
  - (b) complies with the other terms specified in the order, 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 on the terms specified in the order.

*References and applications with respect to licensing by licensing bodies*

### **153 Licences to which Articles 154 to 157 apply**

Articles 154 to 157 apply to licences which are granted by a licensing body otherwise than in pursuance of a licensing scheme and cover works of more than one author, so far as they authorize –

- (a) copying the work;
  - (b) rental of copies of the work to the public;
  - (c) performing, showing or playing the work in public; or
  - (d) communicating the work to the public,
- and references in those Articles to a licence shall be construed accordingly.

#### **154 Reference to licensing authority of proposed licence**

- (1) The terms on which a licensing body proposes to grant a licence may be referred to the licensing authority by the prospective licensee.
- (2) The licensing authority 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 licensing authority decides to entertain the reference the licensing authority shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as he or she 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 licensing authority may determine.

#### **155 Reference to licensing authority of expiring licence**

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

#### **156 Application for review of order as to licence**

- (1) Where an order has been made under Article 154 or 155, the licensing body or the person entitled to the benefit of the order may apply to the licensing authority to review the order.
- (2) An application shall not be made, except with the permission of the licensing authority –

- (a) within 12 months from the date of the order or of the decision on a previous application under this Article; or
  - (b) if the order was made so as to be in force for 15 months or less, or, as a result of the decision on a previous application under this Article, is due to expire within 15 months of that decision, until the last 3 months before the expiry date.
- (3) The licensing authority shall, on an application for review, confirm or vary the order to which the application relates as the licensing authority may determine to be reasonable in the circumstances.

### **157 Effect of order of licensing authority as to licence**

- (1) Where the licensing authority has made an order under Article 154 or 155 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 may be assigned –
  - (a) in the case of an order under Article 154, if assignment is not prohibited under the terms of the licensing authority's order; and
  - (b) in the case of an order under Article 155, if assignment was not prohibited under the terms of the original licence.
- (3) The licensing authority may direct that an order under Article 154 or 155, or an order under Article 156 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.
- (4) If a direction is made under paragraph (3) –
  - (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and
  - (b) the reference in paragraph (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

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

### **158 General considerations: unreasonable discrimination**

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

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

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

### **159 Licences for reprographic copying**

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

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

### **160 Licences for educational establishments in respect of works included in broadcasts**

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

### **161 Licences to reflect conditions imposed by promoters of events**

- (1) This Article applies to references or applications under this Chapter in respect of licences relating to sound recordings, films or broadcasts which include, or are to include, any entertainment or other event.
- (2) The licensing authority shall have regard to any conditions imposed by the promoters of the entertainment or other event and, in particular, the licensing authority 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 Article shall require the licensing authority to have regard to any of the conditions referred to in paragraph (2) in so far as they –
  - (a) purport to regulate the charges to be imposed in respect of the grant of licences; or
  - (b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film or broadcast.

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

- (1) In considering what charges should be paid for a licence on a reference or application under this Chapter relating to licences for the rental of copies of a work, the licensing authority shall take into account any reasonable payments which the owner of the copyright in the work is liable to make in consequence of either the granting of the licence, or of the acts authorized by the licence, to owners of copyright in works included in that work.
- (2) On any reference or application under this Chapter relating to licensing in respect of the copyright in sound recordings, films or broadcasts, the licensing authority 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 authorized by the licence, in respect of any performance included in the recording, film or broadcast.

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

- (1) This Article applies to references or applications under this Chapter relating to licences to include in a broadcast –
  - (a) literary, dramatic, musical or artistic works; or
  - (b) sound recordings of films,where one broadcast (the “first transmission”) is, by reception and immediate re-transmission, to be further broadcast (the “further transmission”).
- (2) So far as the further transmission is to the same area as the first transmission, the licensing authority shall, in considering what charges, if any, should be paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission which adequately remunerates him or her in respect of transmissions to that area.
- (3) So far as the further transmission is to an area outside that to which the first transmission was made, the licensing authority shall leave the further transmission out of account in considering what charges, if any, should be paid for licences for the first transmission.

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

The mention in Articles 158 to 163 of specific matters to which the licensing authority is to have regard in certain classes of case does not affect the licensing authority’s general obligation in any case to have regard to all relevant considerations.

*Use as of right of sound recordings in broadcasts*

**165 Interpretation of Articles 166 to 172**

- (1) In Articles 166 to 172 –

“broadcast” does not include any broadcast which is a transmission of the kind specified in Article 4(2)(b) or (c);

“needletime” means the time in any period (whether determined as a number of hours in the period or a proportion of the period, or otherwise) in which any recordings may be included in a broadcast;

“sound recording” does not include a film sound track when accompanying a film.

- (2) In Articles 167 to 172, “terms of payment” means terms as to payment for including sound recordings in a broadcast.

## **166 Circumstances in which right of use of sound recordings in broadcast is available**

- (1) Article 168 applies to the inclusion in a broadcast of any sound recordings if –
- (a) a licence to include those recordings in the broadcast could be granted by a licensing body or such a body could procure the grant of a licence to do so;
  - (b) the condition in paragraph (2) or (3) applies; and
  - (c) the person including those recordings in the broadcast has complied with Article 167.
- (2) Where the person including the recordings in the broadcast does not hold a licence to do so, the condition referred to in paragraph (1)(b) is that the licensing body refuses to grant, or procure the grant of, such a licence, being a licence –
- (a) whose terms as to payment for including the recordings in the broadcast would be acceptable to him or her or comply with an order of the licensing authority under Article 169 relating to such a licence or any scheme under which it would be granted; and
  - (b) allowing unlimited needletime or such needletime as he or she has demanded.
- (3) Where the person including the recording in the broadcast holds a licence to do so, the condition referred to in paragraph (1)(b) is that –
- (a) the terms of the licence limit needletime; and
  - (b) the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or such needletime as he or she has demanded, or refuses to do so on terms that fall within paragraph (2)(a).
- (4) The references in paragraph (2) to refusing to grant, or procure the grant of, a licence, and in paragraph (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.

## **167 Notice of intention to exercise right of use of sound recording in broadcast**

- (1) A person intending to avail himself or herself of the right conferred by Article 168 must –
- (a) give notice to the licensing body of his or her intention to exercise the right, requesting the body to propose terms of payment; and
  - (b) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he or she proposes to begin exercising that right, and the terms of payment in accordance with which he or she intends to do so.

- (2) Where the person has a licence to include the recordings in a broadcast, the date specified in a notice under paragraph (1)(b) must not be sooner than the date of expiry of that licence except in a case falling within Article 166(3).
- (3) Before a person intending to avail himself or herself of the right begins to exercise it, he or she must –
  - (a) give reasonable notice to the licensing authority of his or her intention to exercise the right, and of the date on which he or she proposes to begin to do so; and
  - (b) apply to the licensing authority under Article 169 to settle the terms of payment.

### **168 Right of use of sound recording in broadcast**

- (1) A person who, on or after the date specified in a notice under Article 167(1)(b), includes in a broadcast any sound recordings in circumstances in which this Article applies, and who –
  - (a) complies with any reasonable condition, notice of which has been given to him or her by the licensing body, as to inclusion in the broadcast of those recordings;
  - (b) provides that body with such information about their inclusion in the broadcast as it may reasonably require; and
  - (c) makes the payments to the licensing body that are required by this Article,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.
- (2) Payments are to be made at not less than quarterly intervals in arrears.
- (3) The amount of any payment is that determined in accordance with any order of the licensing authority under Article 169 or, if no such order has been made –
  - (a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under Article 167; or
  - (b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under Article 167(1)(b).
- (4) Where this Article applies to the inclusion in a broadcast of any sound recordings, it does so in place of any licence.

### **169 Applications to settle terms of payment for use of sound recording in broadcast**

- (1) On an application to settle the terms of payment, the licensing authority shall consider the matter and make such order as the licensing authority may determine to be reasonable in the circumstances.
- (2) An order under paragraph (1) has effect from the date the applicant begins to exercise the right conferred by Article 168 and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

**170 References, etc., about conditions, information and other terms**

- (1) A person exercising the right conferred by Article 168, or who has given notice to the licensing authority of his or her intention to do so, may refer to the licensing authority –
  - (a) any question as to whether any condition as to the inclusion in a broadcast of sound recordings, notice of which has been given to him or her by the licensing body in question, is a reasonable condition; or
  - (b) any question as to whether any information is information which the licensing body can reasonably require him or her to provide.
- (2) On a reference under this Article, the licensing authority shall consider the matter and make such order as the licensing authority may determine to be reasonable in the circumstances.

**171 Application for review of order under Article 169 or 170**

- (1) A person exercising the right conferred by Article 168 or the licensing body may apply to the licensing authority to review any order made under Article 169 or 170.
- (2) An application shall not be made, except with the permission of the licensing authority –
  - (a) within 12 months from the date of the order, or of the decision on a previous application under this Article; or
  - (b) if the order was made so as to be in force for 15 months or less, or as a result of a decision on a previous application is due to expire within 15 months of that decision, until the last 3 months before the expiry date.
- (3) On the application the licensing authority shall consider the matter and make such order confirming or varying the original order as the licensing authority may determine to be reasonable in the circumstances.
- (4) An order under this Article shall have effect from the date on which it is made or such later date as may be specified by the licensing authority.

**172 Factors to be taken into account on application, etc. under Articles 169 to 171**

- (1) In determining what is reasonable on an application or reference made under Article 169 or 170, or on reviewing any order made under Article 171, the licensing authority shall –
  - (a) have regard to the terms of any orders which he or she has made in the case of persons in similar circumstances exercising the right conferred by Article 168; and
  - (b) exercise his or her powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.
- (2) In settling the terms of payment under Article 169, the licensing authority shall not be guided by any order it has made under any enactment other than that Article.
- (3) Article 163 shall apply on an application or reference under Articles 169 to 171 as it applies on an application or reference relating to a licence.

**173 Power to amend Articles 165 to 172**

The Minister may by Order amend Articles 165 to 172 so as –

- (a) to include in any reference to sound recordings any works of a description specified in the Order; or
- (b) to exclude from any reference to a broadcast any broadcast of a description so specified.

*Implied indemnity***174 Implied indemnity in certain schemes and licences for reprographic copying**

- (1) This Article applies to –
  - (a) schemes for licensing reprographic copying of literary, dramatic, musical or artistic works, or the typographical arrangement of published editions; and
  - (b) licences granted by licensing bodies for such copying,where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.
- (2) There is implied –
  - (a) in every scheme to which this Article applies, an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme; and
  - (b) in every licence to which this Article applies, an undertaking by the licensing body to indemnify the licensee,against any liability incurred by the person or licensee by reason of his or her having infringed copyright by making or authorizing the making of reprographic copies of a work in circumstances within the apparent scope of his or her licence.
- (3) The circumstances of a case are within the apparent scope of a licence if –
  - (a) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies; and
  - (b) the licence does not expressly provide that it does not extend to copyright of the description infringed.
- (4) In this Article “liability” includes liability to pay costs.
- (5) This Article applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against the licensee for infringement of copyright as it applies to sums which the licensee is liable to pay in respect of such infringement.
- (6) A scheme or licence to which this Article applies may contain reasonable provision –
  - (a) with respect to the manner in which and the time within which claims under the undertaking implied by this Article are to be made;
  - (b) enabling the operator of the scheme or, as the case may be, the licensing body, to take over the conduct of any proceedings affecting the operator or body’s liability to indemnify.

*Copying by educational establishments***175 Power to extend coverage of scheme or licence authorizing copying by educational establishments**

- (1) This Article applies to –
  - (a) a licensing scheme to which Articles 147 to 152 apply and which is operated by a licensing body; or
  - (b) a licence to which Articles 154 to 157 apply,  
so far as it provides for the grant of licences, or is a licence, authorizing the making by or on behalf of educational establishments, for the purposes of instruction, of copies of copyright works, or the communication, by or on behalf of educational establishments, for the purposes of instruction, of copyright works to the public.
- (2) If it appears to the Minister with respect to a scheme or licence to which this Article applies that –
  - (a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it; and
  - (b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners,the Minister may determine that the scheme or licence shall extend to those works.
- (3) Where he or she proposes to make a determination under paragraph (2), the Minister shall cause notice of the proposal to be given to –
  - (a) the copyright owners;
  - (b) the licensing body in question; and
  - (c) any persons or organizations representative of educational establishments, and such other persons or organizations as the Minister thinks fit.
- (4) The notice shall inform those persons of their right to make written or oral representations to the Minister about the proposal within 6 months from the date of the notice.
- (5) If any person given notice under paragraph (3) wishes to make oral representations the Minister shall appoint a person to hear the representations and report to him or her.
- (6) In considering whether to make a determination the Minister shall take into account any representations made to him or her in accordance with paragraphs (4) and (5), and such other matters as appear to him or her to be relevant.

**176 Variation or discharge of determination under Article 175**

- (1) The owner of the copyright in a work in respect of which a determination is in force under Article 175 may apply to the Minister for variation or revocation of the determination, stating his or her reasons for making the application.
- (2) The Minister shall not entertain an application made within 2 years of the making of the original determination, or of the making of a determination on a previous

application under this Article, unless it appears to the Minister that the circumstances are exceptional.

- (3) On considering the reasons for the application the Minister may confirm the determination forthwith.
- (4) If the Minister does not confirm the determination forthwith, he or she shall cause notice of the application to be given to –
  - (a) the licensing body in question; and
  - (b) such persons or organizations representative of educational establishments, and such other persons or organizations, as the Minister thinks fit.
- (5) The notice shall inform those persons of their right to make written or oral representations to the Minister about the application within the period of 2 months from the date of the notice.
- (6) If any person given notice under paragraph (4) wishes to make oral representations, the Minister shall appoint a person to hear the representations and report to him or her.
- (7) In considering the application the Minister shall take into account the reasons for the application, any representations made to the Minister in accordance with paragraphs (5) and (6), and such other matters as appear to him or her to be relevant.
- (8) The Minister may make such determination as he or she thinks fit confirming or revoking the determination (or, as the case may be, the determination as previously varied), or varying (or further varying) it so as to exclude works from it.

## **177 Appeal against determination under Article 175 or 176**

- (1) The owner of the copyright in a work which is the subject of a determination under Article 175 may appeal to the Court which may confirm or revoke the determination or vary it so as to exclude works from it, as it thinks fit having regard to the considerations mentioned in Article 175(2).
- (2) Where the Minister has made a determination under Article 176 –
  - (a) the person who applied for the determination; or
  - (b) any person or organization representative of educational establishments who was given notice of the application for the determination and made representations in accordance with Article 176(5) and (6),may appeal to the Court which may confirm or revoke the determination or make any other determination which the Minister might have made.
- (3) An appeal under this Article shall be brought within 6 weeks of the making of the determination or such further period as the Court may allow.
- (4) A determination under Article 175 or 176 shall not come into effect until the end of the period of 6 weeks from the making of the determination or, if an appeal is brought before the end of that period, until the appeal proceedings are disposed of or withdrawn.
- (5) If an appeal is brought after the end of that period, any decision of the Court on the appeal shall not affect the validity of anything done in reliance on the determination appealed against before that decision takes effect.

**178 Inquiry whether new scheme or general licence authorizing copying, etc., by educational establishments required**

- (1) The Minister may appoint a person to inquire into the question of whether new provision is required, whether by way of a licensing scheme or general licence, to authorize the making or communication to the public, by or on behalf of educational establishments, for the purposes of instruction, of copies of copyright works of a description which appears to the Minister not to be covered by an existing licensing scheme or general licence and not to fall within the power conferred by Article 175.
- (2) The procedure to be followed in relation to an inquiry shall be such as may be prescribed by Order by the Minister.
- (3) The Order referred to in paragraph (2) shall, in particular, provide for notice to be given to –
  - (a) persons or organizations appearing to the Minister to represent the owners of copyright in works of that description; and
  - (b) persons or organizations appearing to the Minister to represent educational establishments,and for the making of written or oral representations by such persons, but without prejudice to the giving of notice to, and the making of representations by, other persons and organizations.
- (4) The person appointed under paragraph (1) to hold the inquiry shall not recommend the making of new provision unless he or she is satisfied –
  - (a) that it would be of advantage to educational establishments to be authorized to make or communicate to the public copies of the works in question; and
  - (b) that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners.
- (5) If the person appointed under paragraph (1) to hold the inquiry does recommend the making of new provision he or she shall specify any terms, other than terms as to charges payable, on which authorization under the new provision should be available.
- (6) In this Article and in Article 179 a “general licence” means a licence granted by a licensing body which covers all works of the description to which it applies.

**179 Statutory licence where recommendation under Article 178 not implemented**

- (1) The Minister may, within one year of a person making a recommendation under Article 178, by Order provide that if, or to the extent that, provision has not been made in accordance with the recommendation, the making or communicating to the public, by or on behalf of an educational establishment, for the purposes of instruction, of copies of the works to which the recommendation relates shall be treated as licensed by the owners of the copyright in the works.
- (2) For that purpose provision shall be regarded as having been made in accordance with the recommendation if –
  - (a) a licensing scheme notified for the purposes of this Article in accordance with Article 180 has been established under which a licence is available to the establishment in question; or

- (b) a general licence has been –
  - (i) granted to or for the benefit of that establishment,
  - (ii) referred by or on behalf of that establishment to the licensing authority under Article 154, or
  - (iii) offered to or for the benefit of that establishment and refused without such a reference,

and the terms of the scheme or licence accord with the recommendation.

- (3) An Order under paragraph (1) shall also provide that any existing licence authorizing the making or communicating to the public of such copies (not being a licence described in paragraph (2)(a) or (b)) shall cease to have effect to the extent that it is more restricted or more onerous than the licence provided for by the Order.
- (4) An Order under paragraph (1) shall provide for the licence to be free of royalty but, as respects other matters, subject to any terms specified in the recommendation and to any other terms as the Minister may think fit.
- (5) An Order under paragraph (1) may provide that where a copy which would otherwise be an infringing copy is made or communicated to the public in accordance with the licence provided for by the Order but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright, for all subsequent purposes.
- (6) In paragraph (5), “dealt with” means communicated to the public otherwise than in accordance with an Order under paragraph (1), sold, let for hire, offered or exposed for sale or hire or exhibited in public.
- (7) An Order under paragraph (1) shall not come into force until at least 6 months after it is made.
- (8) An Order under paragraph (1) which provides for a statutory licence may be varied from time to time, but not so as to include works other than those to which the recommendation relates or remove any terms specified in the recommendation.
- (9) Paragraph (7) shall not apply to an Order amending, vary or revoking an Order which provides for a statutory licence.

### *Miscellaneous*

## **180 Notification of licensing schemes**

- (1) For the purposes of Article 52, 58, 59, 88, 102 or 179, a licensing scheme is notified if the requirements of this Article have been complied with.
- (2) The person operating or proposing to operate the scheme must –
  - (a) make the scheme available for inspection, without charge, at a place in Jersey during normal office hours; or
  - (b) publish the scheme on an internet website that may be accessed by the public, without charge.
- (3) The person operating or proposing to operate the scheme must take such steps as may be reasonable to bring to the attention of persons likely to be affected by the scheme –

- (a) the arrangements made in compliance with paragraph (2);
  - (b) the Article or Articles of this Law for the purposes of which the scheme is being notified; and
  - (c) the date the scheme comes into operation.
- (4) A scheme shall not come into operation –
  - (a) less than 8 weeks after paragraphs (2) and (3) are first complied with; or
  - (b) if the scheme is the subject of a reference under Article 147, on any later date on which the order of the licensing authority under that Article comes into force or the reference is withdrawn.
- (5) Paragraph (3) shall be taken to have been complied with if the information required by sub-paragraphs (a) to (c) of that paragraph is published in the Jersey Gazette.
- (6) A person operating a scheme shall, within 8 weeks of the scheme first coming into operation, inform the Minister that the scheme is in operation and, if so requested by the Minister, provide the Minister with a copy of the scheme.
- (7) This Article applies to any modification made to a scheme as it applies to the first operation of a scheme.

### **181 Collective exercise of certain rights in relation to cable re-transmission**

- (1) This Article applies to the right (in this Article referred to as “cable re-transmission right”) of the owner of copyright in a literary, dramatic, musical or artistic work, sound recording or film to grant or refuse authorization –
  - (a) for cable re-transmission of a wireless broadcast in Jersey to which Article 101(2) does not apply; or
  - (b) for cable re-transmission of a wireless broadcast to Jersey from another country in which the work is included.
- (2) Cable re-transmission right may be exercised against a cable operator only through a licensing body.
- (3) Where a copyright owner has not transferred management of his or her cable re-transmission right to a licensing body, the licensing body which manages rights of the same category shall be deemed to be mandated to manage his or her right, and where more than one licensing body manages rights of that category, he or she may choose which of them is deemed to be mandated to manage his or her right.
- (4) A copyright owner to whom paragraph (3) applies has the same rights and obligations resulting from any relevant agreement between the cable operator and the licensing body as have copyright owners who have transferred management of their cable re-transmission right to that licensing body.
- (5) Any rights to which a copyright owner may be entitled by virtue of paragraph (4) must be claimed within the period of 3 years beginning with the date of the cable re-transmission concerned.
- (6) This Article does not affect any rights exercisable by the maker of the broadcast, whether in relation to the broadcast or a work included in it.
- (7) In this Article –

“cable operator” means a person responsible for re-transmission of a wireless broadcast;

“cable re-transmission” means the reception and immediate re-transmission by cable, including the transmission of microwave energy between terrestrial fixed points of a wireless broadcast.

## CHAPTER 9 – MISCELLANEOUS AND GENERAL

### 182 States Assembly copyright

- (1) Where a work is made by or under the direction of the States Assembly –
  - (a) the work qualifies for copyright protection notwithstanding Article 20(1); and
  - (b) the States Assembly shall be the first owner of any copyright in the work.
- (2) Copyright in that work is referred to in this Law as “States Assembly copyright”, notwithstanding that it may be, or have been, assigned to another person.
- (3) States Assembly copyright in a literary, dramatic, musical or artistic work or a film shall subsist until the end of the period of 50 years from the end of the year in which the work was made.
- (4) For the purposes of this Article works made by or under the direction of the States Assembly include –
  - (a) works made, in the course of his or her duties, by –
    - (i) the Greffier of the States,
    - (ii) the Deputy Greffier of the States, or
    - (iii) a States’ employee appointed under Article 41(6) of the [States of Jersey Law 2005](#); and
  - (b) any sound recording, film or live broadcast of the proceedings of the States Assembly.
- (5) A work shall not be regarded as made by or under the direction of the States Assembly by reason only of its being commissioned by or on behalf of that body.
- (6) In the case of a work of joint authorship where one or more but not all of the authors are acting on behalf of, or under the direction of, the States Assembly, this Article applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.
- (7) Except as mentioned in paragraphs (1) to (6), and subject to any express exclusion elsewhere in this Part, this Part applies in relation to copyright conferred by this Article as it applies to other copyright.

### 183 States copyright

- (1) This Article does not apply to a work if or to the extent that States Assembly copyright subsists in the work.
- (2) Subject to paragraph (1), where a work is made, in the course of his or her duties by –

- (a) a Minister;
- (b) an Assistant Minister;
- (c) a States' employee (other than a States' employee to whom paragraph (3)(c) or (4)(c) applies); or
- (d) a member of a tribunal or other committee, or a person, appointed under an enactment administered by a Minister, to have authority to decide any matter affecting another person's legal rights or liabilities arising under that enactment,

the work qualifies for copyright protection notwithstanding Article 20(1) and the Chief Minister shall be the first owner of any copyright in the work.

- (3) Subject to paragraph (1), where a work is made, in the course of his or her duties by –

- (a) the Bailiff;
- (b) the Deputy Bailiff;
- (c) an officer (whether or not a States' employee but other than the Greffier of the States and the Deputy Greffier of the States) appointed by or with the consent of the Bailiff, the Viscount or the Judicial Greffier;
- (d) the Master of the Royal Court;
- (e) a Jurat; or
- (f) any other member of a tribunal or other committee, or a person, who has authority to decide any matter affecting another person's legal rights or liabilities (other than a member or person to whom paragraph (2)(d) applies),

the work qualifies for copyright protection notwithstanding Article 20(1) and the Bailiff shall be the first owner of any copyright in the work.

- (4) Subject to paragraph (1), where a work is made, in the course of his or her duties by –

- (a) the Attorney General;
- (b) the Solicitor General; or
- (c) an officer (whether or not a States' employee) appointed by or with the consent of the Attorney General,

the work qualifies for copyright protection notwithstanding Article 20(1) and the Attorney General shall be the first owner of any copyright in the work.

- (5) Copyright in a work which, by virtue of any of paragraphs (2) to (4), is first owned by the Chief Minister, the Bailiff or the Attorney General is referred to in this Part as “States copyright”, notwithstanding that it may be, or have been, assigned to another person.
- (6) States copyright in a literary, dramatic, musical or artistic work continues to subsist –
- (a) until the end of the period of 125 years from the end of the calendar year in which the work was made; or
  - (b) if the work is published commercially before the end of the period of 75 years from the end of the calendar year in which it was made, until the end of the

period of 50 years from the end of the calendar year in which it was first so published.

- (7) States copyright in a film continues to subsist –
  - (a) until the end of the period of 125 years from the end of the calendar year in which the film was made; or
  - (b) if, before the end of the period of 75 years from the end of the calendar year in which it was made, the film is made available to the public, until the end of the period of 50 years from the end of the calendar year in which it is first made so available.
- (8) Paragraph (6) of Article 27 shall apply for the purposes of paragraph (7) of this Article as it applies for the purposes of paragraph (4) of Article 27.
- (9) In the case of a work of joint authorship where one or more but not all of the authors are persons falling or deemed to fall within any of paragraphs (2) to (4), this Article applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.
- (10) Except as mentioned in paragraphs (2) to (9), and subject to any express exclusion elsewhere in this Part, this Part applies in relation to States copyright as to other copyright.

#### **184 Crown copyright**

- (1) This Article does not apply to a work if, or to the extent that, States Assembly copyright or States copyright subsists in the work.
- (2) Subject to paragraph (1), where a work is made by Her Majesty or by an officer or servant of the Crown in the course of his or her duties –
  - (a) the work qualifies for copyright protection notwithstanding Article 20(1); and
  - (b) Her Majesty shall be the first owner of any copyright in the work.
- (3) Copyright in a work that, by virtue of paragraph (2), is first owned by Her Majesty, is referred to in this Part as “Crown copyright”, notwithstanding that it may be, or have been, assigned to another person.
- (4) Crown copyright in a literary, dramatic, musical or artistic work continues to subsist –
  - (a) until the end of the period of 125 years from the end of the calendar year in which the work was made; or
  - (b) if the work is published commercially before the end of the period of 75 years from the end of the calendar year in which it was made, until the end of the period of 50 years from the end of the calendar year in which it was first so published.
- (5) Crown copyright in a film continues to subsist –
  - (a) until the end of the period of 125 years from the end of the calendar year in which the film was made; or
  - (b) if, before the end of the period of 75 years from the end of the calendar year in which it was made, the film is made available to the public, until the end of

the period of 50 years from the end of the calendar year in which it is first made so available.

- (6) Paragraph (6) of Article 27 shall apply for the purposes of paragraph (5) of this Article as it applies for the purposes of paragraph (4) of Article 27.
- (7) In the case of a work of joint authorship where one or more but not all of the authors are persons falling or deemed to fall within paragraph (2), this Article applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.
- (8) Except as mentioned in paragraphs (2) to (7), and subject to any express exclusion elsewhere in this Part, this Part applies in relation to Crown copyright as to other copyright.

### **185 Enforcement, etc. of States Assembly copyright**

- (1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, the States Assembly shall be treated as having the legal capacities of a body corporate.
- (2) Notwithstanding paragraph (1), the functions of the States Assembly as owner of or entity entitled to copyright shall be exercised by the Greffier of the States in accordance with directions given to the Greffier of the States by –
  - (a) the States Assembly; or
  - (b) in accordance with [Standing Orders of the States of Jersey](#), by a committee or panel established by Standing Orders.
- (3) Notwithstanding paragraph (1), legal proceedings relating to copyright that are brought by or against the States Assembly shall be taken in the name of the Greffier of the States.

### **186 Copyright in enactments and revised edition**

- (1) The States Assembly is entitled to copyright in any enactment or in a revised edition.
- (2) Copyright under this Article subsists –
  - (a) in the case of a Law, for the period of 50 years from the end of the year in which the enactment is registered in the Royal Court;
  - (b) in the case of any enactment other than a Law, for the period of 50 years from the end of the year in which the enactment was passed or made;
  - (c) in the case of a revised edition, for the period of 50 years from the end of the year in which the revised edition was brought into force.
- (3) No other copyright, or right in the nature of copyright, subsists in an enactment or revised edition.
- (4) This Article does not derogate from the duties imposed and powers conferred by Article 8(2) to (4) of the [Law Revision \(Jersey\) Law 2003](#).
- (5) Except as provided in paragraphs (1) to (4), this Part applies in relation to copyright under this Article as it applies to States Assembly copyright and, accordingly, references in this Part (except Article 182) to States Assembly copyright include copyright under this Article.

- (6) In this Article “revised edition” and references to a revised edition being brought into force shall be construed in accordance with the [Law Revision \(Jersey\) Law 2003](#).

### **187 Copyright in Acts and Measures**

- (1) Her Majesty is entitled to copyright in every Act of Parliament, Order in Council or Measure of the General Synod of the Church of England.
- (2) Copyright under paragraph (1) subsists from Royal Assent, or, as the case may be, from when the Order or Measure was made, until the end of the period of 50 years from the end of the calendar year in which Royal Assent was given or the Order or Measure was made.
- (3) References in this Part to Crown copyright (except in Article 184) include copyright under this Article and, except as mentioned in paragraphs (1) and (2), this Part applies in relation to copyright under this Article as to other Crown copyright.
- (4) No other copyright, or right in the nature of copyright, subsists in an Act of Parliament, Order in Council or Measure of the General Synod of the Church of England.

### **188 Copyright in works first owned by prescribed international organizations**

- (1) Where an original literary, dramatic, musical or artistic work is made by an officer or employee of, or is published by, a prescribed international organization, and does not qualify for copyright protection under Article 21 or 22, copyright nevertheless subsists in the work by virtue of this Article and the organization is first owner of that copyright.
- (2) Copyright of which a prescribed international organization is first owner by virtue of this Article continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made or any longer period as may be prescribed for the purpose of complying with the international obligations of the United Kingdom which extend to Jersey.
- (3) A prescribed international organization shall be deemed to have, and to have had at all material times, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright and in connection with all legal proceedings relating to copyright.

### **189 Folklore, etc.: anonymous unpublished works**

- (1) Where in the case of an unpublished literary, dramatic, musical or artistic work of unknown authorship there is evidence that the author or, in the case of a joint work, any of the authors, was a qualifying individual by connection with a country outside Jersey, it shall be presumed until the contrary is proved that he or she was a qualifying individual and that copyright accordingly subsists in the work, subject to the provisions of this Part.
- (2) A body appointed under the law of the country referred to in paragraph (1) to protect and enforce copyright in the works referred to in paragraph (1) may be prescribed for the purposes of this Article.

- (3) A body prescribed under paragraph (2) shall be recognized in Jersey as having authority to do in place of the copyright owner anything, other than assign copyright, which it is empowered to do under the law of that country, and it may, in particular, bring proceedings in its own name.
- (4) In paragraph (1) a “qualifying individual” means an individual who at the material time, within the meaning of Article 21, was an individual whose works qualified under that Article for copyright protection.
- (5) This Article does not apply if there has been an assignment of copyright in the work by the author of which notice has been given to the prescribed body.
- (6) Nothing in this Article affects the validity of an assignment of copyright made, or licence granted, by the author or a person lawfully claiming under him or her.

## **190 Avoidance of terms of agreement relating to computer program**

- (1) Where a person has the use of a computer program under an agreement, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict –
  - (a) the making of any backup copy of the program which it is necessary for him or her to have for the purposes of the agreed use;
  - (b) where the conditions in Article 75(2) are met, the decompiling of the program; or
  - (c) the observing, studying or testing of the functioning of the program in accordance with Article 76.
- (2) In this Article, decompile, in relation to a computer program, has the same meaning as in Article 75.

## **191 Avoidance of terms of agreement relating to database**

Where under an agreement a person has a right to use a database or part of a database, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict the performance of any act which would, but for Article 78, infringe the copyright in the database.

# **PART 2**

## **DATABASE RIGHT**

### **CHAPTER 1 – SUBSISTENCE, OWNERSHIP AND DURATION OF DATABASE RIGHT**

## **192 Interpretation of Part 2**

- (1) In this Part –
  - “database right” shall be construed in accordance with Article 193;
  - “extraction”, in relation to any contents of a database, means the permanent or temporary transfer of those contents to another medium by any means or in any form;

“insubstantial”, in relation to part of the contents of a database, shall be construed subject to Article 196(2);

“investment” includes any investment, whether of financial, human or technical resources;

“jointly”, in relation to the making of a database, shall be construed in accordance with Article 194(7);

“lawful user”, in relation to a database, means any person who (whether under a licence to do any of the acts restricted by any database right in the database or otherwise) has a right to use the database;

“licensing body” shall be construed in accordance with Article 214(2);

“licensing scheme” shall be construed in accordance with Article 214(1);

“maker”, in relation to a database, shall be construed in accordance with Article 194;

“qualifying country” shall be construed in accordance with Article 198(2);

“qualifying person” shall be construed in accordance with Article 198(2);

“re-utilisation”, in relation to any contents of a database, means making those contents available to the public by any means;

“substantial”, in relation to any investment, extraction or re-utilisation, means substantial in terms of quantity or quality or a combination of both.

- (2) Except where the context otherwise requires –
  - (a) expressions used in this Part that are not defined in this Part but are defined in Part 1 have the same meaning as in Part 1;
  - (b) other rules of construction that apply for the purposes of Part 1 also apply for the purposes of this Part.
- (3) The making of a copy of a database available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public shall not be taken for the purposes of this Part to constitute extraction or re-utilisation of the contents of the database.
- (4) Where the making of a copy of a database available through an establishment which is accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the costs of the establishment, there shall be no direct or indirect economic or commercial advantage for the purposes of paragraph (3).
- (5) Paragraph (3) does not apply to the making of a copy of a database available for on-the-spot reference use.
- (6) Where a copy of a database has been sold within the protected area by, or with the consent of, the owner of the database right in the database, the further sale within the protected area of that copy shall not be taken for the purposes of this Part to constitute extraction or re-utilisation of the contents of the database.

**193 Database right**

- (1) A property right (“database right”) subsists, in accordance with this Part, in a database if there has been a substantial investment in obtaining, verifying or presenting the contents of the database.
- (2) For the purposes of paragraph (1) it is immaterial whether or not the database or any of its contents is a copyright work.
- (3) This Article has effect subject to Article 198.

**194 Who is maker of a database**

- (1) Subject to paragraphs (2) to (5), the person who takes the initiative in obtaining, verifying or presenting the contents of a database and assumes the risk of investing in that obtaining, verification or presentation shall be regarded as the maker of, and as having made, the database.
- (2) Where a database is made by an employee in the course of his or her employment, his or her employer shall be regarded as the maker of the database, subject to any agreement to the contrary.
- (3) Where a database is made by a person and in circumstances in which, if the database was a work to which Article 182 applied, the copyright in the work would be States Assembly copyright, the States Assembly shall be regarded as the maker of the database.
- (4) Where a database is made by a person and in circumstances in which, if the database was a work to which Article 183 applied, the copyright in the work would be States copyright, the Chief Minister shall be regarded as the maker of the database.
- (5) Where a database is made by a person and in circumstances in which, if the database was a work to which Article 184 applied, the copyright in the work would be Crown copyright, the Crown shall be regarded as the maker of the database.
- (6) For the purposes of this Part a database is made jointly if 2 or more persons acting together in collaboration take the initiative in obtaining, verifying or presenting the contents of the database and assume the risk of investing in that obtaining, verification or presentation.
- (7) References in this Part to the maker of a database shall, except as otherwise provided, be construed, in relation to a database which is made jointly, as references to all the makers of the database.

**195 First ownership of database right**

The maker of a database is the first owner of database right in it.

**196 Acts infringing database right**

- (1) Subject to this Part, a person infringes database right in a database if, without the consent of the owner of the right, he or she extracts or re-utilises all or a substantial part of the contents of the database.

- (2) For the purposes of this Part, the repeated and systematic extraction or re-utilisation of insubstantial parts of the contents of a database may amount to the extraction or re-utilisation of a substantial part of those contents.

### **197 Duration of database right**

- (1) Database right in a database expires at the end of the period of 15 years from the end of the calendar year in which the making of the database was completed.
- (2) Where a database is made available to the public before the end of the period referred to in paragraph (1), database right in the database expires 15 years from the end of the calendar year in which the database was first made available to the public.
- (3) Any substantial change to the contents of a database, including a substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment qualify the database resulting from that investment for its own term of protection.

### **198 Qualification for database right**

- (1) Database right does not subsist in a database unless, at the material time, its maker, or if it was made jointly, one or more of its makers, was a qualifying person.
- (2) In this Part –  
“qualifying country” means –
  - (a) Jersey; or
  - (b) so far as provision is made by Order under Article 399, a country prescribed by the Order for the purposes of this Part;“qualifying person” means –
  - (a) a British citizen;
  - (b) an individual habitually resident in a qualifying country;
  - (c) a body which was incorporated under the law of a qualifying country and which, at the material time, either –
    - (i) has its central administration or principal place of business in a qualifying country, or
    - (ii) has its registered office within a qualifying country, and the body’s operations are linked on an ongoing basis with the economy of a qualifying country;
  - (d) an unincorporated body which was formed under the law of a qualifying country and which, at the material time, has its central administration or principal place of business in a qualifying country; or
  - (e) an individual to whom protection under this Part is extended by Order under Article 399.
- (3) Paragraph (1) shall not apply in any case falling within Article 194(3), (4) or (5).
- (4) In this Article “the material time” means the time when the database was made, or if the making extended over a period, a substantial part of that period.

**199 Avoidance of certain terms affecting lawful users**

- (1) A lawful user of a database which has been made available to the public in any manner is entitled to extract or re-utilise insubstantial parts of the contents of the database for any purpose.
- (2) Where under an agreement a person has a right to use a database, or part of a database, which has been made available to the public in any manner, any term or condition in the agreement is void in so far as it purports to prevent that person from extracting or re-utilising insubstantial parts of the contents of the database, or of that part of the database, for any purpose.

**CHAPTER 2 – ACTS PERMITTED IN RELATION TO DATABASE RIGHT****200 Chapter 2: introductory**

- (1) This Chapter specifies acts which may be done in relation to databases notwithstanding the subsistence of database right.
- (2) This Chapter relates only to the question of infringement of database right and, except as expressly provided by this Law, does not affect any other right or obligation restricting the doing of any of the specified acts.
- (3) Where it is provided by this Chapter that an act does not infringe database right, or may be done without infringing database right, and no particular description of database is mentioned, the act in question does not infringe database right in a database of any description.
- (4) No inference shall be drawn from the description of any act which may by virtue of this Chapter be done without infringing database right as to the scope of the acts restricted by the database right in any description of database.
- (5) The provisions of this Chapter are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

**201 Power to amend Chapter 2**

- (1) The States may by Regulations amend in this Chapter the acts that may be done in relation to databases, notwithstanding the subsistence of database right.
- (2) Regulations under paragraph (1) may also amend this Chapter so as to provide that an agreement is void to the extent that it purports to prohibit or restrict an act which would, but for a provision of this Chapter, infringe database right.
- (3) Regulations made under paragraph (1) may also amend –
  - (a) any other provision of this Law which applies or otherwise refers to any provision of this Chapter;
  - (b) any other provision of this Law, consequentially upon any amendment of this Chapter.

**202 Database in which copyright subsists**

- (1) This Article applies to a database in which both database right and copyright subsist.
- (2) Database right in the database is not infringed by the doing of anything which, by virtue of Chapter 4 of Part 1, does not infringe copyright in the database.

**203 Use of database content for teaching or research**

Database right in a database which has been made available to the public in any manner is not infringed by fair dealing with a substantial part of its contents if –

- (a) that part is extracted from the database by a person who is apart from this Article a lawful user of the database;
- (b) it is extracted for the purpose of illustration for teaching or for research; and
- (c) the source is indicated.

**204 States Assembly and judicial proceedings**

Database right in a database is not infringed by anything done for the purposes of proceedings of the States Assembly or judicial proceedings or for the purposes of reporting such proceedings.

**205 Committee of inquiry or public inquiry**

- (1) Database right in a database is not infringed by anything done for –
  - (a) the purposes of the proceedings of a committee of inquiry or public inquiry; or
  - (b) the purpose of reporting any such proceedings held in public.
- (2) Database right in a database is not infringed by the issue or communication to the public of copies of the report of a committee of inquiry or a public inquiry containing all or a substantial part of the contents of the database.

**206 Database contents open to public inspection or on official register**

- (1) Where the contents of a database are open to public inspection pursuant to a statutory requirement, or are on a statutory register, database right in the database is not infringed by the extraction of all or a substantial part of the contents containing factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve re-utilisation of all or a substantial part of the contents.
- (2) Where the contents of a database are open to public inspection pursuant to a statutory requirement, database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents, by or with the authority of the appropriate person, for the purpose of enabling the contents to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.
- (3) Where the contents of a database which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contain information about

matters of general scientific, technical, commercial or economic interest, database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents, by or with the authority of the appropriate person, for the purpose of disseminating that information.

(4) In this Article –

“appropriate person” means the person required to make the contents of the database open to public inspection or, as the case may be, the person maintaining the register;

“enactment” includes an enactment of the United Kingdom to the extent that it applies to and has effect in Jersey;

“statutory register” means a register maintained in pursuance of a requirement imposed by any enactment.

## **207 Database contents communicated to the Crown or the States in the course of public business**

- (1) This Article applies where the contents of a database have in the course of public business been communicated to the Crown or the States for any purpose, by or with the licence of the owner of the database right and a document or other material thing recording or embodying the contents of the database is owned by or in the custody or control of the Crown or the States.
- (2) The Crown or the States may, for the purpose for which the contents of the database were communicated to it or them, or any related purpose which could reasonably have been anticipated by the owner of the database right in the database, extract or re-utilise all or a substantial part of the contents without infringing database right in the database.
- (3) The Crown or the States may not re-utilise the contents of a database by virtue of this Article if the contents have previously been made available to the public otherwise than by virtue of this Article.
- (4) Paragraph (3) shall not apply to the contents of a database that have previously been made available to the public if it is reasonably believed that they are no longer available to the public.
- (5) In paragraph (1) “public business” includes any activity carried on by the Crown or the States.
- (6) This Article has effect subject to any agreement to the contrary between the Crown or the States and the owner of the database right in the database.
- (7) In this Article “States” means –
  - (a) the States Assembly;
  - (b) any Minister;
  - (c) any committee established by or under [Standing Orders of the States of Jersey](#) (apart from a committee of inquiry).

## **208 Contents of database in public records**

Without prejudice to the generality of Article 206, the contents of a database which are comprised in a public record within the meaning of the [Public Records \(Jersey\) Law 2002](#)

which are open to public inspection in pursuance of that Law may be re-utilised by or with the authority of any officer appointed under that Law, without infringement of database right in the database.

## **209 Acts done under authority of enactment**

- (1) Where the doing of a particular act is specifically authorized by an enactment, whenever passed, then, unless the enactment provides otherwise, the doing of that act does not infringe database right in a database.
- (2) Nothing in this Article shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.
- (3) In this Article “enactment” includes an enactment of the United Kingdom to the extent that it applies to and has effect in Jersey.

## **210 Acts permitted on assumption as to expiry of database right**

- (1) Database right in a database is not infringed by the extraction or re-utilisation of a substantial part of the contents of the database at a time when, or in pursuance of arrangements made at a time when –
  - (a) it is not possible by reasonable inquiry to ascertain the identity of the maker; and
  - (b) it is reasonable to assume that database right has expired.
- (2) In the case of a database alleged to have been made jointly, paragraph (1) applies in relation to each person alleged to be one of the makers.

## **CHAPTER 3 – DEALINGS IN AND INFRINGEMENTS OF DATABASE RIGHT**

### **211 Dealings in database right**

Articles 118 to 121 apply in relation to database right and databases in which that right subsists as they apply in relation to copyright and copyright works.

### **212 Infringement of database right and exclusive licensees**

Articles 127, 128, 132, 133, 134 and 185 apply in relation to database right and databases in which that right subsists as they apply in relation to copyright and copyright work.

### **213 Presumptions in proceedings relevant to database right**

- (1) The following presumptions apply in proceedings brought by virtue of this Part with respect to a database.
- (2) Where a name purporting to be that of the maker appeared on copies of the database as published, or on the database when it was made, the person whose name appeared shall be presumed, until the contrary is proved –
  - (a) to be the maker of the database; and

- (b) to have made it in circumstances not falling within Article 194(2) to (5).
- (3) Where copies of the database as published bear a label or a mark stating –
  - (a) that a named person was the maker of the database; or
  - (b) that the database was first published in a specified year,the label or mark is admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.
- (4) In the case of a database alleged to have been made jointly, paragraphs (2) and (3), so far as is applicable, apply in relation to each person alleged to be one of the makers.

## CHAPTER 4 – DATABASE RIGHT LICENSING

### 214 Database right licensing schemes and licensing bodies

- (1) In this Part a “licensing scheme” means a scheme setting out –
  - (a) the classes of case in which the operator of the scheme, or the person on whose behalf he or she acts, is willing to grant database right licences; and
  - (b) the terms on which licences would be granted in those classes of case,and for this purpose a “scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.
- (2) In this Part a “licensing body” means a society or other organization which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner of a database right or as agent for him or her, of database right licences, and whose objects include the granting of licences covering the databases of more than one maker.
- (3) In this Article “database right licences” means licences to do, or authorize the doing of, any of the things for which consent is required under Article 196.

### 215 Referrals and applications in respect of licensing schemes

- (1) This Article applies to licensing schemes which are operated by licensing bodies and cover databases of more than one maker so far as they relate to licences for extracting or re-utilising all or a substantial part of the contents of a database.
- (2) Articles 147 to 152 shall apply to licensing schemes to which this Article applies with the following modifications –
  - (a) a reference to a licensing scheme shall be construed as a reference to a licensing scheme to which this Article applies;
  - (b) a reference to a licensing body shall be construed in accordance with Article 214(2);
  - (c) the references in Article 152(2) and (7) to infringement of copyright and the owner of the copyright shall be construed, respectively, as references to infringement of database right and the owner of the database right, within the meaning of this Part.

**216 Referrals and applications in respect of licences granted by licensing bodies**

- (1) This Article applies to licences relating to database right which cover databases of more than one maker granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorize extracting or re-utilising all or a substantial part of the contents of a database.
- (2) Articles 154 to 157 shall apply to licences to which this Article applies with the following modifications –
  - (a) a reference to a licence shall be construed as a reference to a licence to which this Article applies;
  - (b) a reference to a licensing body shall be construed in accordance with Article 214(2);
  - (c) the references in Article 157(1) to infringement of copyright and the owner of copyright shall be construed, respectively, as references to infringement of database right and the owner of the database right, within the meaning of this Part.

**217 General considerations on referral or application: unreasonable discrimination**

In determining what is reasonable on a reference or application made under Article 215 or 216 relating to a licensing scheme or licence, the licensing authority shall have regard to –

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

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

**PART 3****PUBLICATION RIGHT****218 Interpretation of Part 3**

- (1) In this Part –
  - “publication” shall be construed in accordance with Article 219;
  - “publication right” shall be construed in accordance with Article 219;
  - “qualifying country” means –
    - (a) Jersey; or
    - (b) so far as provision is made by Order under Article 399, a country prescribed by the Order for the purpose of extending the application of a right conferred by this Part;
  - “qualifying person” means –

- (a) a British citizen;
  - (b) a body incorporated under the law of Jersey; or
  - (c) so far as provision is made by Order under Article 399, a person prescribed by the Order for the purpose of extending the application of a right conferred by this Part.
- (2) Except where the context otherwise requires –
  - (a) expressions used in this Part that are not defined for the purposes of this Part but are defined for the purposes of Part 1 have the same meaning as in Part 1; and
  - (b) other rules of construction that apply for the purposes of Part 1 apply also for the purposes of this Part.

## **219 Subsistence, ownership, qualification for and duration of publication right**

- (1) A person who, after the expiry of copyright protection, publishes for the first time a previously unpublished work has, in accordance with the following provisions, a property right (“publication right”) equivalent to copyright.
- (2) For this purpose publication includes making available to the public, in particular –
  - (a) the issue of copies to the public;
  - (b) making the work available by means of an electronic retrieval system;
  - (c) the loan or rental of copies of the work to the public;
  - (d) the performance, exhibition or showing of the work in public; or
  - (e) communicating the work to the public.
- (3) No account shall be taken for this purpose of any unauthorized act.
- (4) For the purposes of paragraph (3), in relation to a time when there is no copyright in the work, an unauthorized act means an act done without the consent of the owner of the physical medium in which the work is embodied or on which it is recorded.
- (5) A work qualifies for publication right protection only if –
  - (a) first publication is in a qualifying country; and
  - (b) the publisher of the work is at the time of first publication a qualifying person.
- (6) Where 2 or more persons jointly publish a work, it shall be sufficient for the purposes of paragraph (5) if any of them is a qualifying person.
- (7) No publication right arises from the publication of a work in which States Assembly copyright, States copyright or Crown copyright subsisted.
- (8) Publication right expires at the end of the period of 25 years from the end of the calendar year in which the work was first published.
- (9) In this Article a “work” means a literary, dramatic, musical or artistic work or a film.

## **220 Rights of person having publication right**

The substantive provisions of Chapter 3 of Part 1 relating to copyright (but not moral rights in copyright) apply in relation to publication right as in relation to copyright.

**221 Acts permitted in relation to publication right**

- (1) The substantive provisions of Chapter 4 of Part 1 relating to copyright, except Articles 85, 92, 94 and 95, apply in relation to publication right as in relation to copyright.
- (2) The States may by Regulations amend this Part as to the acts which may be done in relation to works, notwithstanding the subsistence of publication right.
- (3) Regulations under paragraph (2) may also amend this Part so as to provide that an agreement is void to the extent that it purports to prohibit or restrict an act which would, but for a provision of this Part which permits the act, infringe publication right.
- (4) Regulations under paragraph (2) may also amend –
  - (a) any other provision of this Law which applies or otherwise refers to a provision of this Part which permits the doing of an act in relation to works notwithstanding the subsistence of publication right;
  - (b) any other provision of this Law, consequentially upon any amendment made by the Regulations.

**222 Dealings in publication right**

The substantive provisions of Chapter 6 of Part 1 relating to copyright, except Articles 125 and 126, apply in relation to publication right as in relation to copyright.

**223 Remedies for infringement of publication right**

The substantive provisions of Chapter 7 of Part 1 relating to copyright, except Articles 136, 137 and 138, apply in relation to publication right as in relation to copyright.

**224 Licensing of publication right**

- (1) Subject to the modifications made by paragraph (2), the substantive provisions of Chapter 8 of Part 1 relating to copyright, except Article 145(4) and (5), apply in relation to publication right as in relation to copyright.
- (2) In Articles 145(2), 146 and 153, for “works of more than one author” substitute “works of more than one publisher”.

**225 Application of other enactments relating to copyright**

Except where the context otherwise requires, any other enactment relating to copyright (whether passed or made before or after this Law) applies in relation to publication right as in relation to copyright.

## PART 4

### CIRCUMVENTION OF PROTECTION MEASURES AND ELECTRONIC RIGHTS MANAGEMENT

#### 226 Interpretation of Part 4

- (1) In this Part “technical device”, in relation to a computer program, means any device intended to prevent or restrict acts that are not authorized by the copyright owner of that program and are restricted by copyright.
- (2) In this Part “technological measures” means any technology, device or component which is designed, in the normal course of its operation, to protect a copyright work other than a computer program.
- (3) Technological measures are “effective” if the use of the work is controlled by the copyright owner through –
  - (a) an access control or protection process such as encryption, scrambling or other transformation of the work; or
  - (b) a copy control mechanism,  
which achieves the intended protection.
- (4) In paragraphs (2) and (3), the reference to –
  - (a) protection of a work is to the prevention or restriction of acts that are not authorized by the copyright owner of that work and are restricted by copyright; and
  - (b) use of a work does not extend to any use of the work that is outside the scope of the acts restricted by copyright.
- (5) Except where the context otherwise requires –
  - (a) expressions used in this Part that are not defined for the purposes of this Part but are defined for the purposes of Part 1 have the same meaning as in Part 1; and
  - (b) other rules of construction that apply for the purposes of Part 1 apply also for the purposes of this Part.

#### 227 Rights and remedies in respect of circumvention of technical devices applied to computer programs

- (1) This Article applies where –
  - (a) a technical device has been applied to a computer program; and
  - (b) a person (“A”) knowing or having reason to believe that it will be used to make infringing copies –
    - (i) manufactures for sale or hire, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire or has in his or her possession for commercial purposes any means the sole intended purpose of which is to facilitate the unauthorized removal or circumvention of the technical device, or

- (ii) publishes information intended to enable or assist persons to remove or circumvent the technical device.
- (2) The following persons have the same rights against A as a copyright owner has in respect of an infringement of copyright –
  - (a) a person –
    - (i) issuing to the public copies of, or
    - (ii) communicating to the public,the computer program to which the technical device has been applied;
  - (b) the copyright owner or his or her exclusive licensee, if he or she is not the person specified in sub-paragraph (a);
  - (c) the owner or exclusive licensee of any intellectual property right in the technical device applied to the computer program.

## **228 Exercise of concurrent rights under Article 227**

The rights conferred by Article 227 are concurrent, and Articles 132(2) and 134(1) to (4) apply, in proceedings under Article 227, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

## **229 Further rights of persons in Article 227 as to delivery up, rights of seizure and disposal**

- (1) The persons mentioned in Article 227(2) have the same rights under Article 129 and 131 in relation to any such means as is referred to in paragraph (1) of Article 227 which a person has in his or her possession, custody or control with the intention that it should be used to facilitate the unauthorized removal or circumvention of any technical device which has been applied to a computer program, as a copyright owner has in relation to an infringing copy.
- (2) The rights conferred by paragraph (1) are concurrent, and Article 134(5) shall apply, as respects anything done under Article 129 or 131 by virtue of paragraph (1), in relation to persons with concurrent rights as it applies, as respects anything done under Article 129 or 131, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (3) Article 143 applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of paragraph (1).

## **230 Presumptions in proceedings under Article 227 or 229**

Articles 136 to 138 apply in relation to proceedings under Article 227 or 229.

## **231 Rights and remedies in respect of circumvention of technological measures**

- (1) This Article applies where –

- (a) effective technological measures have been applied to a copyright work other than a computer program; and
  - (b) a person (“B”) does anything which circumvents those measures knowing, or with reasonable grounds to know, that he or she is pursuing that objective.
- (2) This Article does not apply where a person, for the purposes of research into cryptography, does anything which circumvents effective technological measures unless in so doing, or in issuing information derived from that research, he or she affects prejudicially the rights of the copyright owner.
- (3) The following persons have the same rights against B as a copyright owner has in respect of an infringement of copyright –
  - (a) a person –
    - (i) issuing to the public copies of, or
    - (ii) communicating to the public,the work to which effective technological measures have been applied;
  - (b) the copyright owner or his or her exclusive licensee, if he or she is not the person specified in sub-paragraph (a).

## **232 Exercise of concurrent rights under Article 231**

The rights conferred by Article 231 are concurrent, and Articles 132(2) and 134(1) to (4) apply, in proceedings under Article 231, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

## **233 Presumptions in proceedings under Article 231**

Articles 136 to 138 apply in relation to proceedings under Article 231 with the necessary modifications.

## **234 Application of Articles 231 and 232 to database right, publication right and rights in performances**

- (1) Articles 231 and 232 and any other provision of this Law as it has effect for the purposes of those Articles apply, with any necessary adaptations, to –
  - (a) database right under Part 2;
  - (b) publication right under Part 3; and
  - (c) rights in performances under Part 6,as they apply to copyright.
- (2) Article 213 applies in proceedings under Article 231 brought by virtue of this Article in relation to database right.

## **235 Offences: devices and services designed to circumvent technological measures**

- (1) A person shall be guilty of an offence if he or she –

- (a) manufactures for sale or hire;
- (b) imports otherwise than for his or her private and domestic use;
- (c) in the course of a business –
  - (i) sells or lets for hire,
  - (ii) offers or exposes for sale or hire,
  - (iii) possesses, or
  - (iv) distributes; or
- (d) distributes, otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,

any device, product or component which is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures.

(2) Where –

- (a) a person –
  - (i) manufactures for sale or hire,
  - (ii) imports otherwise than for his or her private and domestic use,
  - (iii) in the course of a business –
    - (A) sells or lets for hire,
    - (B) offers or exposes for sale or hire,
    - (C) possesses, or
    - (D) distributes, or
  - (iv) distributes, otherwise than in the course of a business, to such extent as to affect prejudicially the copyright owner,

a device, product or component which is capable of enabling or facilitating the circumvention of effective technological measures; and

- (b) that person, or another person acting in concert with that person and with that person's knowledge, promotes, advertises or markets the device, product or component as capable of enabling or facilitating the circumvention of effective technological measures,

that person shall be guilty of an offence.

(3) A person shall be guilty of an offence if he or she provides –

- (a) in the course of a business; or
- (b) otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,

a service the purpose of which is to enable or facilitate the circumvention of effective technological measures.

(4) Where –

- (a) a person –
  - (i) in the course of a business, or

- (ii) otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,  
provides a service which is capable of enabling or facilitating the circumvention of effective technological measures; and
  - (b) that person, or another person acting in concert with that person and with that person's knowledge, promotes, advertises or markets the service as capable of enabling or facilitating the circumvention of effective technological measures,  
that person shall be guilty an offence.
- (5) Paragraphs (1) and (3) do not make unlawful anything done by, or on behalf of, law enforcement agencies or any of the intelligence services –
  - (a) in the interests of national security; or
  - (b) for the purpose of the prevention or detection of crime, the investigation of an offence, or the conduct of a prosecution.
- (6) In paragraph (5), “intelligence services” has the meaning assigned by Article 1(1) of the [Regulation of Investigatory Powers \(Jersey\) Law 2005](#).
- (7) It is a defence to any prosecution for an offence against paragraph (1) or (3) for the defendant to prove that he or she did not know, and had no reasonable ground for believing, that –
  - (a) the device, product or component; or
  - (b) the service,enabled or facilitated the circumvention of effective technological measures.
- (8) A person guilty of an offence against any provision of this Article is liable to imprisonment for a term of 2 years and to a fine.
- (9) Where an offence against this Article committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (10) Where the affairs of a body corporate are managed by its members, paragraph (9) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

## **236 Forfeiture of devices, etc., in relation to which offence has been committed**

- (1) In this Article, “devices” means devices, products or components for the purpose of circumventing effective technological measures.
- (2) Where devices have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this Article for an order for the forfeiture of the devices.

- (3) For the purposes of this Article “relevant offence” means –
  - (a) an offence against Article 235; or
  - (b) an offence involving dishonesty or deception.
- (4) An application under this Article may be made –
  - (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the devices, to that court; or
  - (b) where no application for the forfeiture of the devices has been made under sub-paragraph (a), to the Magistrate’s Court.
- (5) On an application under this Article, the court shall make an order for the forfeiture of any devices only if it is satisfied that a relevant offence has been committed in relation to the devices.
- (6) A court may infer for the purposes of this Article that such an offence has been committed in relation to any devices if it is satisfied that such an offence has been committed in relation to devices which are representative of the devices in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (7) A person aggrieved by an order of the Magistrate’s Court made under this Article or by a decision not to make such an order, may appeal against that order or decision to the Royal Court.
- (8) An order under this Article may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.
- (9) Subject to paragraph (10), where any devices are forfeited under this Article they shall be destroyed in accordance with such directions as the court may give.
- (10) On making an order under this Article the court may direct that the devices to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under this Part in relation to the devices in question, or dealt with in such other way as the court considers appropriate.

## **237 Civil rights and remedies in respect of devices and services promoted as or designed to circumvent technological measures**

- (1) This Article applies where –
  - (a) effective technological measures have been applied to a copyright work other than a computer program; and
  - (b) a person (“C”) manufactures, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire, or has in his or her possession for commercial purposes any device, product or component, or provides services which –
    - (i) are promoted, advertised or marketed for the purpose of the circumvention of those measures,
    - (ii) have only a limited commercially significant purpose or use other than to circumvent those measures, or

- (iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of those measures.
- (2) The following persons have the same rights against C as a copyright owner has in respect of an infringement of copyright –
  - (a) a person –
    - (i) issuing to the public copies of, or
    - (ii) communicating to the public,the work to which effective technological measures have been applied;
  - (b) the copyright owner or his or her exclusive licensee, if he or she is not the person specified in sub-paragraph (a);
  - (c) the owner or exclusive licensee of any intellectual property right in the effective technological measures applied to the work.

### **238 Exercise of concurrent rights under Article 237**

The rights conferred by Article 237 are concurrent, and Articles 132(2) and 134(1) to (4) apply, in proceedings under that Article, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

### **239 Damages in proceedings under Article 237**

In Article 128(1) as it applies to proceedings for infringement of the rights conferred by Article 237, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference to his or her not knowing or having reason to believe that his or her acts enabled or facilitated an infringement of copyright.

### **240 Further rights under Article 237 as to delivery up, rights of seizure and disposal**

- (1) The persons mentioned in Article 237(2) have the same rights under Articles 129 and 131 in relation to any such device, product or component which a person has in his possession, custody or control with the intention that it should be used to circumvent effective technological measures, as a copyright owner has in relation to any infringing copy.
- (2) The rights conferred by paragraph (1) are concurrent, and Article 134(5) shall apply, as respects anything done under Article 129 or 131 by virtue of paragraph (1), in relation to persons with concurrent rights as it applies, as respects anything done under Article 129 or 131, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (3) Article 143 applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of paragraph (1).

**241 Presumptions in proceedings under Article 237 or 240**

Articles 136 to 138 apply, in relation to proceedings under Article 237 or 240, with the necessary modifications.

**242 Application of Articles 237 to 240 to database right, publication right and rights in performances**

- (1) Articles 237, 238, 239 and 240 and any other provision of this Law as it has effect for the purposes of those Articles, apply, with any necessary adaptations, to –
  - (a) database right under Part 2;
  - (b) publication right under Part 3; and
  - (c) rights in performances under Part 6,as they apply to copyright.
- (2) Article 213 applies in proceedings brought under Article 237 by virtue of this Article in relation to database right.

**243 Remedy where effective technological measures prevent permitted acts**

- (1) In this Article –

“permitted act” means an act which may be done in relation to copyright works, notwithstanding the subsistence of copyright, by virtue of any of the following Articles –

  - (a) Article 46;
  - (b) Article 49;
  - (c) Article 50;
  - (d) Article 51;
  - (e) Article 55;
  - (f) Article 58;
  - (g) Article 59;
  - (h) Article 61;
  - (i) Article 62;
  - (j) Article 64;
  - (k) Article 65;
  - (l) Article 66;
  - (m) Article 67;
  - (n) Article 68;
  - (o) Article 69;
  - (p) Article 70;
  - (q) Article 71;

- (r) Article 72;
- (s) Article 73;
- (t) Article 89;
- (u) Article 96;
- (v) Article 97;
- (w) Article 98;
- (x) Article 99;
- (y) Article 102;
- (z) Article 103;

“voluntary measure or agreement” means –

- (a) any measure taken voluntarily by a copyright owner, his or her exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program; or
- (b) any agreement between a copyright owner, his or her exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program and another party,

the effect of which is to enable a person to carry out a permitted act.

- (2) Where the application of any effective technological measure to a copyright work other than a computer program prevents a person from carrying out a permitted act in relation to that work then that person or a person being a representative of a class of persons prevented from carrying out a permitted act may issue a notice of complaint to the Minister.
- (3) A notice of complaint issued under paragraph (2) shall be accompanied by the prescribed fee, if any.
- (4) Following receipt of a notice of complaint issued under paragraph (2), the Minister may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Minister to be requisite or expedient for the purpose of –
  - (a) establishing whether any voluntary measure or agreement relevant to the copyright work the subject of the complaint subsists; or
  - (b) (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or exclusive licensee of that copyright work makes available to the complainant the means of carrying out the permitted act that is the subject of the complaint to the extent necessary to so benefit from that permitted act.
- (5) Where the Minister gives directions under paragraph (4)(b), the Minister –
  - (a) shall inform the person who issued the notice of complaint under paragraph (2) of the directions given; and
  - (b) may take steps to bring the directions to the attention of the public.
- (6) It shall be the duty of any person to whom a direction is given under paragraph (4)(a) or (b) to give effect to that direction.

- (7) The obligation to comply with a direction given under paragraph (4)(b) is a duty owed to the complainant or, where the complaint is made by a representative of a class of persons, to that representative and to each person in the class represented.
- (8) A breach of the duty described in paragraphs (6) and (7) is actionable (subject to the defences and other incidents applying to actions for breach of statutory duty).
- (9) The Minister may also give directions –
  - (a) as to the form and manner in which a notice of complaint referred to in paragraph (2) may be delivered to the Minister;
  - (b) as to the form and manner in which evidence of any voluntary measure or agreement may be delivered to the Minister; and
  - (c) generally as to the procedure to be followed in relation to a complaint made under this Article.
- (10) The Minister shall take such steps as, in the Minister's opinion, are reasonable to bring directions given under paragraph (9) to the attention of the public.
- (11) Any direction under this Article may be varied or revoked by a subsequent direction under this Article.
- (12) Any direction given under this Article shall be in writing.
- (13) This Article does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.
- (14) This Article applies only where a complainant has lawful access to the protected copyright work, or where the complainant is a representative of a class of persons, where the class of persons have lawful access to the work.
- (15) The States may by Regulations amend the definition "permitted act" in paragraph (1).
- (16) Regulations under paragraph (15) may also amend –
  - (a) Article 244 and any other provision of this Law which applies (with or without adaptations) or otherwise refers to an act which is a permitted act as defined in paragraph (1);
  - (b) any other provision of this Law, consequentially upon any amendment of the definition.

## **244 Application of Article 243 to database right, publication right and rights in performances**

- (1) Article 243 applies, with any necessary adaptations, to database right as it applies to copyright and, in Article 243 as so applied, "permitted act" refers to any act that may be done, notwithstanding the subsistence of database right, by virtue of any provision of Chapter 2 of Part 2.
- (2) Article 243 applies, with any necessary adaptations, to publication right as it applies to copyright and, in Article 243 as so applied, "permitted act" refers to any act that may be done notwithstanding the subsistence of publication right, by virtue of Article 221.

- (3) Article 243 applies, with any necessary adaptations, to rights in performances as it applies to copyright.
- (4) In Article 243 as applied by paragraph (3), “permitted act” refers to any act that may be done, notwithstanding the subsistence of rights in performances, by virtue of any of the following Articles –
  - (a) Article 278;
  - (b) Article 280;
  - (c) Article 281;
  - (d) Article 282;
  - (e) Article 283;
  - (f) Article 284;
  - (g) Article 285;
  - (h) Article 286;
  - (i) Article 289;
  - (j) Article 291;
  - (k) Article 292;
  - (l) Article 293;
  - (m) Article 294;
  - (n) Article 297;
  - (o) Article 298.

## **245 Rights and remedies in respect of electronic rights management information**

- (1) This Article applies where a person (“D”), knowingly and without authority, removes or alters electronic rights management information which –
  - (a) is associated with a copy of a copyright work; or
  - (b) appears in connection with the communication to the public of a copyright work,where D knows, or has reason to believe, that by so doing he or she is inducing, enabling, facilitating or concealing an infringement of copyright.
- (2) This Article also applies where a person (“E”), knowingly and without authority, distributes, imports for distribution or communicates to the public copies of a copyright work from which electronic rights management information –
  - (a) associated with the copies; or
  - (b) appearing in connection with the communication to the public of the work,has been removed or altered without authority and where E knows, or has reason to believe, that by so doing he or she is inducing, enabling, facilitating or concealing an infringement of copyright.
- (3) A person issuing to the public copies of or communicating the work to the public has the same rights against D and E as a copyright owner has in respect of an infringement of copyright.

- (4) The copyright owner or his or her exclusive licensee, if he or she is not the person issuing to the public copies of or communicating the work to the public, also has the same rights against D and E as he or she has in respect of an infringement of copyright.
- (5) In this Article, “rights management information” means any information provided by the copyright owner or the holder of any right under copyright which identifies the work, the author, the copyright owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information.

## **246 Exercise of concurrent rights under Article 245**

The rights conferred by Article 245 are concurrent, and Articles 132(2) and 134(1) to (4) apply, in proceedings under Article 245, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

## **247 Presumptions in proceedings under Article 245**

Articles 136 to 138 apply in relation to proceedings under Article 245.

## **248 Application of Articles 245 and 246 to database right, publication right and rights in performances**

- (1) Articles 245 and 246, and any other provision of this Law as it has effect for the purposes of those Articles apply, with any necessary adaptations, to –
  - (a) database right under Part 2;
  - (b) publication right under Part 3; and
  - (c) rights in performances under Part 6,as they apply to copyright.
- (2) The provisions of Article 213 apply in proceedings brought under Article 245 by virtue of this Article in relation to database right.

# **PART 5**

## **FRAUDULENT RECEPTION OF TRANSMISSIONS**

## **249 Interpretation of Part 5**

- (1) In this Part “qualifying country” means –
  - (a) Jersey; or
  - (b) so far as provision is made by Order under Article 399, a country prescribed by the Order for the purposes of this Part.
- (2) Except where the context otherwise requires –

- (a) expressions used in this Part that are not defined for the purposes of this Part but are defined for the purposes of Part 1 have the same meaning as in Part 1; and
- (b) other rules of construction that apply for the purposes of Part 1 apply also for the purposes of this Part.

## **250 Offence of fraudulently receiving programmes**

- (1) A person who dishonestly receives a programme included in a broadcasting service provided from a place within a qualifying country, with intent to avoid payment of any charge applicable to the reception of the programme shall be guilty of an offence and liable to a fine of level 3 on the standard scale.<sup>14</sup>
- (2) Where this Article applies in relation to a broadcasting service, it also applies to any service run for the person providing that service, or a person providing programmes for that service, which consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both.
- (3) Where an offence against this Article committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

## **251 Offence relating to unauthorized decoders**

- (1) A person shall be guilty of an offence if he or she –
  - (a) makes, imports, distributes, sells or lets for hire or offers or exposes for sale or hire any unauthorized decoder;
  - (b) has in his or her possession for commercial purposes any unauthorized decoder;
  - (c) installs, maintains or replaces for commercial purposes any unauthorized decoder; or
  - (d) advertises any unauthorized decoder for sale or hire or otherwise promotes any unauthorized decoder by means of commercial communications.
- (2) A person guilty of an offence against paragraph (1) shall be liable to imprisonment for a term of 10 years and to a fine.
- (3) It shall be a defence to any prosecution for an offence against paragraph (1) for the defendant to prove that he or she did not know, and had no reasonable ground for believing, that the decoder was an unauthorized decoder.

- (4) Where an offence against this Article committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of –
- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,
- the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (5) Where the affairs of a body corporate are managed by its members, paragraph (4) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (6) In this Article –
- “apparatus” includes any device, component or electronic data (including software);
- “conditional access technology” means any technical measure or arrangement whereby access to encrypted transmissions in an intelligible form is made conditional on prior individual authorization;
- “decoder” means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;
- “encrypted” includes subjected to scrambling or the operation of cryptographic envelopes, electronic locks, passwords or any other analogous application;
- “transmission” means –
- (a) any programme included in a broadcasting service which is provided from a place in a qualifying country;
  - (b) an information society service which is provided from a place in a qualifying country;
- “unauthorized”, in relation to a decoder, means that the decoder is designed or adapted to enable an encrypted transmission, or any service of which it forms part, to be accessed in an intelligible form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for accessing the transmission or service (whether by the circumvention of any conditional access technology related to the transmission or service or by any other means).

## 252 Forfeiture of unauthorized decoders

- (1) Where unauthorized decoders have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this Article for an order for the forfeiture of the unauthorized decoders.
- (2) For the purposes of this Article “relevant offence” means –
- (a) an offence against Article 251(1); or
  - (b) an offence involving dishonesty or deception.
- (3) An application under this Article may be made –

- (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the unauthorized decoders, to that court; or
  - (b) where no application for the forfeiture of the unauthorized decoders has been made under sub-paragraph (a), to the Magistrate's Court.
- (4) On an application under this Article, the court shall make an order for the forfeiture of any unauthorized decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorized decoders.
- (5) A court may infer for the purposes of this Article that such an offence has been committed in relation to any unauthorized decoders if it is satisfied that such an offence has been committed in relation to unauthorized decoders which are representative of the unauthorized decoders in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (6) A person aggrieved by an order of the Magistrate's Court made under this Article or by a decision not to make such an order, may appeal against that order or decision to the Royal Court.
- (7) An order under this Article may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.
- (8) Subject to paragraph (9), where any unauthorized decoders are forfeited under this Article they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this Article the court may direct that the unauthorized decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under Article 253 in relation to the unauthorized decoders in question, or dealt with in such other way as the court considers appropriate.

## **253 Civil rights and remedies in respect of apparatus, etc. for unauthorized reception of transmissions**

- (1) A person who –
  - (a) makes charges for the reception of programmes included in a broadcasting service provided from a place in a qualifying country;
  - (b) sends encrypted transmissions of any other description from a place in a qualifying country; or
  - (c) provides conditional access services from a place in a qualifying country,shall be entitled to the rights and remedies referred to in paragraphs (2) and (3).
- (2) He or she has the same rights and remedies against a person –
  - (a) who –
    - (i) makes, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire,
    - (ii) has in his or her possession for commercial purposes, or
    - (iii) installs, maintains or replaces for commercial purposes,

any apparatus designed or adapted to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so; or

- (b) who publishes or otherwise promotes by means of commercial communications any information which is calculated to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so,

as a copyright owner has in respect of an infringement of copyright.

- (3) Further, he or she has the same rights under Articles 129 and 131 in relation to any such apparatus as a copyright owner has in relation to an infringing copy.
- (4) Where this Article applies in relation to a broadcasting service, it also applies to any service run for the person providing that service, or a person providing programmes for that service, which consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both.
- (5) In Article 128(1), as it applies to proceedings for infringement of the rights conferred by this Article, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference to his or her not knowing or having reason to believe that his or her acts infringed the rights conferred by this Article.
- (6) Article 143 applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of paragraph (3).
- (7) In this Article “apparatus”, “conditional access technology” and “encrypted” have the same meanings as in Article 251, “transmission” includes transmissions as defined in that Article and “conditional access services” means services comprising the provision of conditional access technology.

## PART 6

### PERFORMERS’ PROTECTION

#### CHAPTER 1 – INTRODUCTORY

#### 254 Interpretation of Part 6

- (1) In this Part –
- “distribution right” has the meaning given in Article 261;
- “exclusive recording contract” shall be construed in accordance with Article 268;
- “illicit recording” has the meaning given in Article 255;
- “issue to the public of copies of a recording” shall be construed in accordance with Article 261;
- “licensing body” has the meaning given in Article 324(2);
- “licensing scheme” has the meaning given in Article 324(1);

“making available right” has the meaning given in Article 263;

“moral rights” means the rights conferred by Chapter 7;

“performance” means –

- (a) a dramatic performance (which includes dance and mime);
- (b) a musical performance;
- (c) a reading or recitation of a literary work; or
- (d) a performance of a variety act of any similar presentation,

which is, or so far as it is, a live performance given by one or more individuals;

“performer’s non-property rights” has the meaning given in Article 256;

“performer’s property rights” has the meaning given in Article 256;

“person having recording rights” shall be construed in accordance with Article 268;

“qualifying country” means –

- (a) Jersey; or
- (b) so far as provision is made by Order under Article 399, a country prescribed by the Order for the purpose of extending the application of a right conferred by this Part;

“qualifying individual” means –

- (a) a British citizen;
- (b) an individual domiciled or resident in Jersey;
- (c) so far as provision is made by Order under Article 399, an individual prescribed by the Order for the purpose extending the application of a right conferred by this Part;

“qualifying performance” has the meaning given in Article 257;

“qualifying person” means –

- (a) a qualifying individual;
- (b) a body corporate which –
  - (i) is formed under the law of a qualifying country, and
  - (ii) has in a qualifying country a place of business at which substantial business activity is carried on,

and, in determining for the purpose of this definition whether substantial business activity is carried on at a place of business in any country, no account shall be taken of dealings in goods which are at all material times outside that country;

“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 the performance; or
- (c) made, directly or indirectly, from another recording of the performance;

“rental” has the meaning given in Article 258;

“rental right” has the meaning given in Article 262;

“reproduction right” has the meaning given in Article 260;

“rights owner” shall be construed in accordance with Article 312(2).

- (2) Except where the context otherwise requires –
- (a) expressions used in this Part that are not defined for the purposes of this Part but are defined for the purposes of Part 1 have the same meaning as in Part 1; and
  - (b) other rules of construction that apply for the purposes of Part 1 apply also for the purposes of this Part.
- (3) The following provisions apply for the purposes of this Part and in relation to an infringement of the rights conferred by this Part, as they apply for the purposes of Part 1 and in relation to an infringement of copyright –
- (a) Article 4(4) to (8);
  - (b) Article 17(2) and (3); and
  - (c) Article 34(3).

## **255 “Illicit recording”**

- (1) In this Part “illicit recording”, in relation to a performance, shall be construed in accordance with this Article.
- (2) For the purposes of a performer’s rights, a recording of the whole or any substantial part of a performance of his or hers is an illicit recording if it is made, otherwise than for private purposes, without his or her consent.
- (3) For the purposes of the rights of a person having recording rights, a recording of the whole or any substantial part of a performance subject to the exclusive recording contract is an illicit recording if it is made, otherwise than for private purposes, without his or her consent or that of the performer.
- (4) For the purposes of Articles 318 and 319, a recording is an illicit recording if it is an illicit recording for the purposes mentioned in paragraph (2) or (3).
- (5) In this Part “illicit recording” includes a recording falling to be treated as an illicit recording by virtue of any of Articles 278(3), 280(4), 287(2), 291(3), 293(2) or 294(2), but does not include a recording made in accordance with any other provision of Chapter 3.
- (6) It is immaterial for the purposes of this Article where the recording was made.

## **256 “Performer’s non-property rights”, “performer’s property rights” and “rights owner”**

- (1) In this Part, “performer’s property rights” means the rights conferred by Articles 260 to 263, being –
- (a) reproduction right;
  - (b) distribution right;
  - (c) rental right;
  - (d) making available right.

- (2) In this Part, “performer’s non-property rights” means the rights conferred by Articles 265 to 267.
- (3) References in this Part (apart from Chapter 7) to the consent of the performer shall be construed, in relation to a performer’s property rights, as references to the consent of the rights owner.
- (4) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of a performer’s property rights in relation to a performance, the rights owner for any purpose of this Part (apart from Chapter 7) is the person who is entitled to the aspect of those rights relevant for that purpose.
- (5) Where a performer’s property rights (or any aspect of them) is owned by more than one person jointly, references in this Part (apart from Chapter 7) to the rights owner are to all the owners, so that, in particular, any requirement of the licence of the rights owner requires the licence of all of them.

## **257 Qualifying performance**

A performance is a qualifying performance for the purposes of the provisions of this Part relating to performers’ rights if –

- (a) it is given by a qualifying individual; or
- (b) the performance takes place in a qualifying country.

## **258 “Rental”**

- (1) In this Part, subject to paragraphs (2) and (3), “rental” means making a copy of a recording available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage.
- (2) The expression “rental” does not include –
  - (a) making available for the purpose of public performance, communication to the public or playing or showing in public;
  - (b) making available for the purpose of exhibition in public; or
  - (c) making available for on-the-spot reference use.
- (3) References in this Part to the rental of copies of a recording of a performance include the rental of the original recording of the live performance.

## **259 Performer’s rights to be independent of copyright, etc.**

The rights conferred by this Part are independent of –

- (a) any copyright in, or moral rights relating to, any work performed or any film or sound recording of, or broadcast including, the performance; and
- (b) any other right or obligation arising otherwise than under this Part.

## CHAPTER 2 – ECONOMIC RIGHTS

*Performer's property rights***260 Consent required for copying of recording: “reproduction right”**

- (1) A performer's rights are infringed by a person who, without the performer's consent, makes a copy of a recording of the whole or any substantial part of a qualifying performance.
- (2) In paragraph (1), making a copy of a recording includes making a copy which is transient or is incidental to some other use of the original recording.
- (3) It is immaterial whether the copy is made directly or indirectly.
- (4) The right of a performer under this Article to authorize or prohibit the making of such copies is a property right, referred to in this Part as “reproduction right”.

**261 Consent required for issue of copies to public: “distribution right”**

- (1) A performer's rights are infringed by a person who, without the performer's consent, issues to the public copies of a recording of the whole or any substantial part of a qualifying performance.
- (2) References in this Part to the issue to the public of copies of a recording are references to –
  - (a) the act of putting into circulation in the protected area copies not previously put into circulation in the protected area by or with the consent of the performer; or
  - (b) the act of putting into circulation outside the protected area copies not previously put into circulation in the protected area or elsewhere.
- (3) Reference in this Part to the issue to the public of copies of a recording do not include –
  - (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see Article 262); or
  - (b) any subsequent importation of such copies into the protected area, except so far as paragraph (2)(a) applies to putting into circulation in the protected area copies previously put into circulation outside the protected area.
- (4) References in this Part to the issue of copies of a recording of a performance include the issue of the original recording of the live performance.
- (5) The right of a performer under this Article to authorize or prohibit the issue of copies to the public is a property right, referred to in this Part as “distribution right”.

**262 Consent required for rental of copies to public: “rental right”**

- (1) A performer's rights are infringed by a person who, without the performer's consent, rents to the public copies of a recording of the whole or any substantial part of a qualifying performance.

- (2) The right of a performer under this Article to authorize or prohibit the rental of copies to the public is a property right, referred to in this Part as “rental right”.

## **263 Consent required for making available to public: “making available right”**

- (1) A performer’s rights are infringed by a person who, without the performer’s consent, makes available to the public a recording of the whole or any substantial part of a qualifying performance by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them.
- (2) The right of a performer under this Article to authorize or prohibit the making available to the public of a recording is a property right, referred to in this Part as “making available right”.

### *Right to equitable remuneration*

## **264 Right to equitable remuneration for exploitation of sound recording**

- (1) Where a commercially published sound recording of the whole or any substantial part of a qualifying performance –
  - (a) is played in public; or
  - (b) is communicated to the public otherwise than by its being made available to the public in the way mentioned in Article 263(1),the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording.
- (2) In paragraph (1) the reference to publication of a sound recording includes making it available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.
- (3) The right to equitable remuneration under this Article may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on the performer’s behalf.
- (4) Notwithstanding paragraph (3), the right to equitable remuneration under this Article is transmissible by testamentary disposition or by operation of law as moveable property and may be assigned or further transmitted by any person into whose hands it passes.
- (5) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to paragraphs (6), (7), (8) and (11).
- (6) In default of agreement as to the amount payable by way of equitable remuneration, the person by or to whom it is payable may apply to the licensing authority to determine the amount payable.
- (7) A person by or to whom equitable remuneration is payable may also apply to the licensing authority –
  - (a) to vary any agreement as to the amount payable; or
  - (b) to vary any previous determination of the licensing authority as to that matter.

- (8) Except with the permission of the licensing authority, an application under paragraph (7) may not be made within 12 months from the date of a previous determination.
- (9) An order made on an application under paragraph (7) has effect from the date on which it is made or a later date specified by the licensing authority.
- (10) On an application under this Article the licensing authority shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as the licensing authority may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the sound recording.
- (11) An agreement is of no effect in so far as it purports –
  - (a) to exclude or restrict the right to equitable remuneration under this Article; or
  - (b) to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the licensing authority under this Article.
- (12) In this Article “collecting society” means a society or other organization which has as its main object or one of its main objects the exercise of the right to equitable remuneration on behalf of more than one performer.

*Performer’s non-property rights*

**265 Consent required for making recording or broadcast of live performance**

- (1) A performer’s rights are infringed by a person who, without the performer’s consent –
  - (a) makes a recording of the whole or any substantial part of a qualifying performance directly from the live performance;
  - (b) broadcasts live the whole or any substantial part of a qualifying performance; or
  - (c) makes a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of the live performance.
- (2) In an action for infringement of a performer’s rights brought by virtue of this Article 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.

**266 Consent required for showing in public, etc. of recording of performance made without consent**

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) communicates to the public the whole or any substantial part of a qualifying performance,

by means of a recording which was, and which that person knows or has reason to believe was, made without the performer’s consent.

**267 Consent required for importing, possessing or dealing with illicit recording**

- (1) A performer's rights are infringed by a person who, without the performer's consent –
  - (a) imports into Jersey otherwise than for the person's 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 Article a defendant shows that the illicit recording was innocently acquired by him or her or a predecessor in title of his or hers, the only remedy available against him or her in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.
- (3) In paragraph (2) "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

*Rights of person having recording rights***268 "Exclusive recording contract" and "person having recording rights"**

- (1) In this Part an "exclusive recording contract" means a contract between a performer and another person under which that person is entitled, to the exclusion of all other persons, including the performer, to make recordings of one or more of the performer's performances with a view to their commercial exploitation.
- (2) Subject to paragraph (3) references in this Part to a "person having recording rights", in relation to a performance are to a person –
  - (a) who is party to and has the benefit of an exclusive recording contract to which the performance is subject; or
  - (b) to whom the benefit of that contract has been assigned,and who is a qualifying person.
- (3) If a performance is subject to an exclusive recording contract but the person referred to in paragraph (2) is not a qualifying person, references in this Part to a "person having recording rights" in relation to the performance are to any person –
  - (a) who is licensed by that person to make recordings of the performance with a view to their commercial exploitation; or
  - (b) to whom the benefit of that licence has been assigned,and who is a qualifying person.
- (4) In this Article "with a view to commercial exploitation" means with a view to the recordings being sold or let for hire, or shown or played in public.

**269 Recording rights: consent required for recording of performance subject to exclusive contract**

- (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his or her consent or that of the performer, makes a recording of the whole or any substantial part of the performance.
- (2) In an action for infringement of those rights brought by virtue of this Article 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.

**270 Recording rights: consent required for use of recording made without consent**

- (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his or her consent or, in the case of a qualifying performance, that of the performer –
  - (a) shows or plays in public the whole or any substantial part of the performance; or
  - (b) communicates to the public 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 paragraph (1) to “the appropriate consent” is to the consent of –
  - (a) the performer; or
  - (b) the person who at the time the consent was given had recording rights in relation to the performance or, if there was more than one such person, of all of them.

**271 Recording rights: consent required for importing, possessing or dealing with illicit recording**

- (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his or her consent or, in the case of a qualifying performance, that of the performer –
  - (a) imports into Jersey 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 those rights brought by virtue of this Article a defendant shows that the illicit recording was innocently acquired by him or her or a predecessor in title of his or hers, the only remedy available against him or her in respect of the infringement shall be damages not exceeding a reasonable payment in respect of the act complained of.
- (3) In paragraph (2) “innocently acquired” means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

**272 Duration of rights**

- (1) Subject to paragraph (2) the rights conferred by this Chapter in relation to a performance expire –
  - (a) at the end of the period of 50 years from the end of the calendar year in which the performance takes place; or
  - (b) if during that period a recording of the performance is released, 50 years from the end of the calendar year in which it is released.
- (2) For the purposes of paragraph (1) a recording is “released” when it is first published, played or shown in public or communicated to the public, but in determining whether a recording has been released no account shall be taken of any unauthorized act.

**CHAPTER 3 – ACTS PERMITTED IN RELATION TO ECONOMIC RIGHTS****273 Chapter 3: introductory**

- (1) The provisions of this Chapter –
  - (a) specify acts which may be done in relation to a performance or recording notwithstanding the rights conferred by Chapter 2;
  - (b) relate only to the question of infringement of those rights; and
  - (c) do not affect any other right or obligation restricting the doing of any of the specified acts.
- (2) No inference shall be drawn from the description of any act which may by virtue of this Chapter be done without infringing the rights conferred by Chapter 2 as to the scope of those rights.
- (3) The provisions of this Chapter are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

**274 Power to amend Chapter 3**

- (1) The States may by Regulations amend in this Chapter the acts which may be done in connection with a performance or recording notwithstanding the rights conferred by Chapter 2.
- (2) Regulations under paragraph (1) may also amend this Chapter so as to provide that an agreement is void to the extent that it purports to prohibit or restrict an act which would, but for a provision of this Chapter, infringe a right conferred by Chapter 2.
- (3) Regulations under paragraph (1) may also amend –
  - (a) any other provision of this Law which applies or otherwise refers to any provision of this Chapter;
  - (b) any other provision of this Law, consequentially upon any amendment of this Chapter.

**275 Making of temporary copies**

The rights conferred by Chapter 2 are not infringed by the making of a temporary copy of a recording of a performance which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable –

- (a) a transmission of the recording in a network between third parties by an intermediary; or
  - (b) a lawful use of the recording,
- and which has no independent economic significance.

**276 Criticism, reviews and news reporting**

- (1) Fair dealing with a performance or recording for the purpose of criticism or review of that or another performance or recording or of a work does not infringe any of the rights conferred by Chapter 2.
- (2) Fair dealing with a performance or recording for the purpose of reporting current events does not infringe any of the rights conferred by Chapter 2.
- (3) An agreement is void to the extent that it purports to prohibit or restrict an act which would, apart from this Article, infringe any right conferred by Chapter 2.

**277 Incidental inclusion of performance or recording**

- (1) The rights conferred by Chapter 2 are not infringed by the incidental inclusion of a performance or recording in a sound recording, film or broadcast.
- (2) The rights conferred by Chapter 2 are not infringed by anything done in relation to copies of, or the playing, showing, or communication to the public of, anything whose making was, by virtue of paragraph (1), not an infringement of those rights.
- (3) 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 or broadcast if it is deliberately included.

**278 Things done for purposes of instruction or examination**

- (1) The rights conferred by Chapter 2 are not infringed 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 sound-tracks, if copying is done by a person giving or receiving instruction.
- (2) The rights conferred by Chapter 2 are not infringed –
  - (a) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination; or
  - (b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.
- (3) Where a recording which would otherwise be an illicit recording is made in accordance with this Article 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 Chapter 2, for all subsequent purposes.

- (4) For the purposes of paragraph (3), “dealt with” has the same meaning as in Article 55(6).

## **279 Playing or showing sound recording, film or broadcast at educational establishment**

- (1) The playing or showing of a sound recording, film or broadcast at an educational establishment for the purposes of instruction before an audience consisting of teachers and pupils at the establishment and other persons directly connected with the activities of the establishment is not a playing or showing of a performance in public for the purposes of infringement of the rights conferred by Chapter 2.
- (2) A person is not for this purpose directly connected with the activities of the educational establishment simply because he or she is the parent of a pupil at the establishment.
- (3) Any provision made under Article 7(2) with respect to the application of Article 57 also applies for the purposes of this Article.

## **280 Recording of broadcasts by educational establishments**

- (1) A recording of a broadcast or a copy of such a recording may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing any of the rights conferred by Chapter 2 in relation to any performance or recording included in it.
- (2) The rights conferred by Chapter 2 are not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of paragraph (1) not an infringement of such rights, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.
- (3) This Article does not apply if or to the extent that there is a licensing scheme notified for the purposes of this Article in accordance with Article 328.
- (4) Where a recording which would otherwise be an illicit recording is made in accordance with this Article 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 Chapter 2, for all subsequent purposes.
- (5) For the purposes of paragraph (3) “dealt with” has the same meaning as in Article 58(5).
- (6) Any provision made under Article 7(2) with respect to the application of Article 58 also applies for the purposes of this Article.

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

If an article of cultural or historical importance or interest cannot lawfully be exported from Jersey unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of any right conferred by Chapter 2 to make that copy.

**282 States Assembly and judicial proceedings**

The rights conferred by Chapter 2 are not infringed by anything done for the purposes of proceedings of the States Assembly or judicial proceedings or for the purpose of reporting those proceedings.

**283 Committees of inquiry and public inquiries**

- (1) The rights conferred by Chapter 2 are not infringed by anything done for the purposes of the proceedings of a committee of inquiry or a public inquiry or for the purpose of reporting those proceedings held in public.
- (2) The rights conferred by Chapter 2 are not infringed by the issue or communication to the public of copies of the report of a committee of inquiry or public inquiry.

**284 Public records**

Material which is comprised in a public record, within the meaning of Article 3 of the [Public Records \(Jersey\) Law 2002](#), which is open to public inspection in pursuance of that Law, may be copied, and a copy may be supplied to any person, by or with the authority of any officer appointed under that Law, without infringing any right conferred by Chapter 2.

**285 Recording communicated to the Crown or the States in the course of public business**

- (1) This Article applies where any recording in which rights conferred by Chapter 2 subsist has, in the course of public business, been communicated to the Crown or the States for any purpose by or with the licence of the owner of those rights and a material thing recording or embodying the recording is owned by or in the custody or control of the Crown or the States.
- (2) The Crown or the States may, for the purpose for which the recording was communicated to it or them, or any related purpose which could reasonably have been anticipated by the owner of the rights conferred by Chapter 2, copy the recording, issue copies of the recording to the public, and communicate the recording to the public without infringing any rights conferred by Chapter 2 in the recording.
- (3) The Crown or the States may not copy a recording, issue copies of a recording to the public or communicate a recording to the public by virtue of this Article, if the recording has previously been made available to the public otherwise than by virtue of this Article.
- (4) Paragraph (3) shall not apply to a recording that has previously been made available to the public if it is reasonably believed that copies of the recording are no longer available to the public.
- (5) This Article has effect subject to any agreement to the contrary between the Crown or the States and the owner of the rights conferred by Chapter 2.
- (6) In this Article –
  - “public business” includes any activity carried on by the Crown or the States;
  - “States” means –
    - (a) the States Assembly;

- (b) any Minister;
- (c) any committee established by or under [Standing Orders of the States of Jersey](#) (other than a committee of inquiry);

“recording” includes a copy of a recording.

## **286 Acts done under authority of enactment**

- (1) Where the doing of a particular act is specifically authorized by an enactment, whenever passed or made, then, unless the enactment provides otherwise, the doing of that act does not infringe the rights conferred by Chapter 2.
- (2) Nothing in this Article shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.
- (3) Expressions used in this Article have the same meaning as in Article 73.

## **287 Transfer of copies of works in electronic form**

- (1) This Article applies where a recording of a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to make further recordings in connection with his or her use of the recording.
- (2) If there are no express terms –
  - (a) prohibiting the transfer of the recording by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any consent or terminating any consent 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 rights conferred by Chapter 2, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.
- (3) Paragraph (2) also applies where the original purchased recording is no longer usable and what is transferred is a further copy used in its place.
- (4) The above provisions also apply on a subsequent transfer, with the substitution for references in paragraph (2) to the purchaser of references to the subsequent transferor.

## **288 Use of recordings of spoken works in certain cases**

- (1) Where a recording of the reading or recitation of a literary work is made for the purpose –
  - (a) of reporting current events; or
  - (b) of communicating to the public the whole or part of the reading or recitation,it is not an infringement of the rights conferred by Chapter 2 to use the recording (or to copy the recording and use the copy) for that purpose, provided the conditions in paragraph (2) are met.

- (2) The conditions are that –
  - (a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast;
  - (b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;
  - (c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and
  - (d) the use is by or with the authority of a person who is lawfully in possession of the recording.

## **289 Recordings of folk-songs for purposes of archive**

- (1) A recording of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body without infringing any of the rights conferred by Chapter 2, provided the conditions in paragraph (2) are met.
- (2) The conditions are that –
  - (a) the words are unpublished and of unknown authorship at the time the recording is made;
  - (b) the making of the recording does not infringe any copyright; and
  - (c) its making is not prohibited by any performer.
- (3) Copies of a recording made in reliance on paragraph (1) and included in an archive maintained by a designated body may, if the prescribed conditions are met, be made and supplied by the archivist without infringing any of the rights conferred by Chapter 2.
- (4) In this Article –
  - “designated body” means a body designated for the purposes of Article 89;
  - “prescribed conditions” means the conditions prescribed for the purposes of paragraph (3) of that Article.

## **290 Playing of sound recordings for purposes of club, society, etc.**

It is not an infringement of any right conferred by Chapter 2 to play a sound recording as part of the activities of, or for the benefit of, a club, society or other organization if the following conditions are met –

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

## **291 Incidental recording for purposes of broadcast**

- (1) A person who proposes to broadcast a recording of a performance in circumstances not infringing the rights conferred by Chapter 2 shall be treated as having consent

for the purposes of Chapter 2 for the making of a further recording for the purposes of the broadcast.

- (2) That consent is subject to the condition that the further recording –
  - (a) shall not be used for any other purpose; and
  - (b) shall be destroyed within 28 days of being first used for broadcasting the performance.
- (3) A recording made in accordance with this Article shall be treated as an illicit recording –
  - (a) for the purposes of any use in breach of the condition mentioned in paragraph (2)(a); and
  - (b) for all the purposes after that condition or the condition mentioned in paragraph (2)(b) is broken.

## **292 Recordings for purposes of supervision and control of broadcasts and other services**

- (1) The rights conferred by Chapter 2 are not infringed by the making or use by the British Broadcasting Corporation, for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.
- (2) The rights conferred by Chapter 2 are not infringed by anything done in pursuance of –
  - (a) section 115(4) or (6) or 117 of the Broadcasting Act 1996;
  - (b) a condition which, by virtue of section 334(1) of the Communications Act 2003, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996;
  - (c) a direction given under section 109(2) of the Broadcasting Act 1990; or
  - (d) section 334(3) of the Communications Act 2003.
- (3) The rights conferred by Chapter 2 are not infringed by the use by OFCOM in connection with the performance of any of their functions under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003, of –
  - (a) any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
  - (b) any existing material which is transferred to them by a scheme made under section 30 of the Communications Act 2003.
- (4) In paragraph (3) –
  - “existing material” means –
    - (a) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996; and
    - (b) any recording or transcript which was provided to the Broadcasting Standards Commission under section 115(4) or (6) or 116(5) of the Broadcasting Act 1996;

“OFCOM” means the Office of Communications established under the Communications Act 2003 as it has effect in the United Kingdom.

### **293 Recording for the purposes of time-shifting**

- (1) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any right conferred by Chapter 2 in relation to a performance or recording included in the broadcast.
- (2) Where a recording which would otherwise be an illicit recording is made in accordance with this Article but is subsequently dealt with –
  - (a) it shall be treated as an illicit recording for the purposes of that dealing; and
  - (b) if that dealing infringes any right conferred by Chapter 2, it shall be treated as an illicit recording for all subsequent purposes.
- (3) For the purposes of paragraph (2) “dealt with” has the same meaning as in Article 98(3).

### **294 Photographs of broadcasts**

- (1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any right conferred by Chapter 2 in relation to a performance or recording included in the broadcast.
- (2) Where a recording which would otherwise be an illicit recording is made in accordance with this Article but is subsequently dealt with –
  - (a) it shall be treated as an illicit recording for the purposes of that dealing; and
  - (b) if that dealing infringes any right conferred by Chapter 2, it shall be treated as an illicit recording for all subsequent purposes.
- (3) For the purposes of paragraph (2) “dealt with” has the same meaning as in Article 99(3).

### **295 Free public showing or playing of broadcast**

- (1) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any right conferred by Chapter 2 in relation to a performance or recording included in –
  - (a) the broadcast; or
  - (b) any sound recording or film which is played or shown in public by reception of the broadcast.
- (2) The audience shall be treated as having paid for admission to a place –
  - (a) if they have paid for admission to a place of which that place forms part; or
  - (b) if goods or services are supplied at that place (or a place of which it forms part) –

- (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast, or
  - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.
- (3) The following shall not be regarded as having paid admission to a place –
  - (a) persons admitted as residents or inmates of the place;
  - (b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts is only incidental to the main purposes of the club or society.
- (4) Where the making of the broadcast was an infringement of the rights conferred by Chapter 2 in relation to a performance or recording, the fact that it was heard or seen in public by the reception of the broadcast shall be taken into account in assessing the damages for that infringement.

## **296 Reception of wireless broadcast and re-transmission by cable**

- (1) This Article applies where a wireless broadcast made from a place in Jersey is received and immediately re-transmitted by cable.
- (2) The rights conferred by Chapter 2 in relation to a performance or recording included in the broadcast are not infringed if, and to the extent that, the broadcast is made for reception in the area in which it is re-transmitted by cable, but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted by cable shall be taken into account in assessing the damages for that infringement.
- (3) The Minister may by Order –
  - (a) provide that in specified cases paragraph (2) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that paragraph; or
  - (b) exclude the application of that paragraph in relation to broadcasts of a specified description made as mentioned in that paragraph.
- (4) Expression used in this Article have the same meaning as in Article 101.

## **297 Provision of sub-titled copies of broadcast**

- (1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make recordings of broadcasts and copies of such recordings and issue or lend copies to the public without infringing any right conferred by Chapter 2 in relation to a performance or recording included in the broadcast.
- (2) This Article does not apply if, or to the extent that, there is a licensing scheme, notified for the purposes of this Article in accordance with Article 328.
- (3) In this Article “designated body” means a body designated for the purposes of Article 102.

**298 Recording of broadcast for archival purposes**

- (1) A recording of a broadcast of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any right conferred by Chapter 2 in relation to a performance or recording included in the broadcast.
- (2) In this Article “designated class” and “designated body” means a class or body designated for the purposes of Article 103.

**CHAPTER 4 – DEALINGS IN PERFORMERS’ ECONOMIC RIGHTS****299 Assignment and licences of performer’s property rights**

- (1) A performer’s property rights are transmissible by assignment, by testamentary disposition or by operation of law, as moveable property.
- (2) An assignment or other transmission of a performer’s property rights may be partial, that is, limited so as to apply –
  - (a) to one or more, but not all, of the things requiring the consent of the rights owner; or
  - (b) to part, but not the whole, of the period for which the rights are to subsist.
- (3) An assignment of a performer’s property rights is not effective unless it is in writing signed by or on behalf of the assignor.
- (4) A licence granted by the owner of a performer’s property rights is binding on every successor in title to his or her interest in the rights, except –
  - (a) a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence; or
  - (b) a person deriving title from that purchaser,and references in this Part (apart from Chapter 7) to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

**300 Prospective ownership of a performer’s property rights**

- (1) This Article applies where by an agreement made in relation to a future recording of a performance, and signed by or on behalf of the performer, the performer purports to assign his or her performer’s property rights (wholly or partially) to another person.
- (2) If on the rights coming into existence the assignee or another person claiming under him or her would be entitled as against all other persons to require the rights to be vested in him or her, they shall vest in the assignee or his or her successor in title by virtue of this paragraph.
- (3) A licence granted by a prospective owner of a performer’s property rights is binding on every successor in title to his or her interest (or prospective interest) in the rights, except –
  - (a) a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence; or

- (b) a person deriving title from that purchaser,  
and references in this Part (apart from Chapter 7) to doing anything with, or without, the licence of the rights owner shall be construed accordingly.
- (4) In paragraph (3) “prospective owner” in relation to a performer’s property rights means a person who is prospectively entitled to those rights by virtue of the agreement mentioned in paragraph (1).

### **301 Exclusive licences of performers’ property rights**

- (1) In this Part (apart from Chapter 7) “exclusive licence” means a licence in writing signed by or on behalf of the owner of a performer’s property rights authorizing the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the rights owner.
- (2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he or she has against the person granting the licence.

### **302 Performer’s property rights to pass under will with unpublished original recording**

Where under a bequest (whether general or specific) a person is entitled beneficially or otherwise to any material thing containing an original recording of a performance which was not published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator’s will or a codicil to it, be construed as including any performer’s rights in relation to the recording to which the testator was entitled immediately before his or her death.

### **303 Presumption of transfer of rental right in case of film production agreement**

- (1) Where an agreement concerning film production is concluded between a performer and a film producer, the performer is presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising from the inclusion of a recording of his or her performance in the film.
- (2) Where this Article applies, the absence of signature by or on behalf of the performer does not exclude the operation of Article 300.
- (3) The reference in paragraph (1) to an agreement concluded between a performer and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.
- (4) Article 304 applies where there is a presumed transfer by virtue of this Article as in the case of an actual transfer.

### **304 Right to equitable remuneration where rental right transferred**

- (1) Where a performer has transferred his or her rental right concerning a sound recording or a film to the producer of the sound recording or film, he or she retains the right to equitable remuneration for the rental.

- (2) The reference in Article 303 to the transfer of rental right by one person to another includes any arrangement having the effect described in paragraph (1), whether made by them directly or through intermediaries.
- (3) The right to equitable remuneration under this Article may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on his or her behalf.
- (4) Notwithstanding paragraph (3) the right to equitable remuneration is transmissible by testamentary disposition or by operation of law as moveable property and may be assigned or further transmitted by any person into whose hands it passes.
- (5) Equitable remuneration under this Article is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his or hers.
- (6) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to Article 305.
- (7) An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this Article.
- (8) In this Article a “collecting society” means a society or other organization which has as a main object the exercise of the right to equitable remuneration on behalf of more than one performer.

### **305 Equitable remuneration: reference of amount payable under Article 304 to licensing authority**

- (1) In default of agreement as to the amount payable by way of equitable remuneration under Article 304, the person by or to whom it is payable may apply to the licensing authority to determine the amount payable.
- (2) A person by or to whom equitable remuneration is payable may also apply to the licensing authority –
  - (a) to vary any agreement as to the amount payable; or
  - (b) to vary any previous determination of the licensing authority as to that matter.
- (3) Except with the permission of the licensing authority an application may not be made under paragraph (2) within 12 months from the date of a previous determination.
- (4) An order made on an application under paragraph (2) has effect from the date on which it is made or a later date specified by the licensing authority.
- (5) On an application under this Article the licensing authority shall consider the matter and make an order as to the method of calculating and paying equitable remuneration that the licensing authority may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the film or sound recording.
- (6) Remuneration shall not be considered inequitable merely because it was paid by way of a single payment or at the time of the transfer of the rental right.
- (7) An agreement is of no effect in so far as it purports to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the licensing authority under this Article.

**306 Performers' non-property rights: assignment or transmission**

- (1) A performer's non-property rights are not assignable or transmissible, except to the following extent.
- (2) On the death of a person entitled to any such right –
  - (a) the right passes to such person as he or she may by testamentary disposition specifically direct; and
  - (b) if or to the extent that there is no direction, the right is exercisable by his or her executors or administrators.
- (3) References in this Part (apart from Chapter 7) to the performer, in the context of the person having that right, shall be construed as references to the person for the time being entitled to exercise those rights.
- (4) Where by virtue of paragraph (2)(a) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.
- (5) Any damages recovered by an executor or administrator by virtue of this Article in respect of an infringement after a person's death shall devolve as part of that person's estate as if the right of action had subsisted and been vested in him or her immediately before his or her death.

**307 Transmissibility of rights of person having recording rights**

- (1) The rights conferred by Chapter 2 on a person having recording rights are not assignable or transmissible.
- (2) This Article shall not affect Article 268(2)(b) or (3)(b), so far as those provisions confer rights under this Part on a person to whom the benefit of a contract or licence is assigned.

**308 Consent**

- (1) Consent for the purposes of this Part (apart from Chapter 7) by a person having a performer's non-property rights, or by a person having recording rights, may be given in relation to a specific performance, a specified description of performances or performances generally, and may relate to past or future performances.
- (2) A person having recording rights in a performance is bound by any consent given by a person through whom he or she derives his or her rights under the exclusive recording contract or licence in question, in the same way as if the consent had been given by him or her.
- (3) Where a performer's non-property right passes to another person any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by him or her.

**309 Power of licensing authority to give consent on behalf of performer in certain cases**

- (1) The licensing authority may, on the application of a person wishing to make a copy of a recording of a performance, give consent in a case where the identity or

whereabouts of the person entitled to the reproduction right cannot be ascertained by reasonable inquiry.

- (2) Consent given by the licensing authority has effect as consent of the person entitled to the reproduction right for the purposes of –
  - (a) the provisions of this Part relating to performers' rights; and
  - (b) Article 318(4), in the case described in sub-paragraph (a) thereof,and may be given subject to any conditions specified in the licensing authority's order.
- (3) The licensing authority shall not give consent under paragraph (1) except after the service or publication of any notices required by an Order made under Article 384 or as the licensing authority may in any particular case direct.
- (4) In any case the licensing authority shall take into account –
  - (a) whether the original recording was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further recording; and
  - (b) whether the 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 was made.
- (5) Where the licensing authority gives consent under this Article the licensing authority shall, in default of agreement between the applicant and the person entitled to the reproduction right, make any order it thinks fit as to the payment to be made to that person in consideration of consent being given.

## CHAPTER 5 – REMEDIES FOR INFRINGEMENT OF PERFORMER'S ECONOMIC RIGHTS

### *Performer's property rights*

#### **310 Infringement actionable by owner of performer's property rights**

- (1) An infringement of a performer's property rights is actionable by the rights owner.
- (2) In an action for infringement of a performer's property rights all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.
- (3) This Article has effect subject to Articles 311, 312 and 313.

#### **311 Damages in action for infringement of performer's property rights**

- (1) Where in an action for infringement of a performer's property rights it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the rights subsisted in the recording to which the action relates, the plaintiff is not entitled to damages against the defendant, but without prejudice to any other remedy.
- (2) The Court may in an action for infringement of a performer's property rights having regard to all the circumstances, and in particular to –

- (a) the flagrancy of the infringement; and
  - (b) any benefit accruing to the defendant by reason of the infringement,
- award any additional damages as the justice of the case may require.

### **312 Rights and remedies for exclusive licensee: performer's property rights**

- (1) An exclusive licensee has, except against the owner of a performer's property rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.
- (2) An exclusive licensee's rights and remedies are concurrent with those of the rights owner and references in the relevant provisions of this Chapter to the rights owner shall be construed accordingly.
- (3) In an action brought by an exclusive licensee by virtue of this Article 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 rights owner.

### **313 Exercise of concurrent rights: performer's property rights**

- (1) Where an action for infringement of a performer's property rights brought by the rights owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the rights owner, or, as the case may be, the exclusive licensee may not, without the leave of the Court, proceed with the action unless the other is either joined as plaintiff or added as a defendant.
- (2) A rights owner or exclusive licensee who is added as a defendant in pursuance of paragraph (1) is not liable for any costs in the action unless he or she takes part in the proceedings.
- (3) Paragraphs (1) and (2) do not affect the granting of interlocutory relief on an application by the rights owner or exclusive licensee alone.
- (4) Where an action for infringement of a performer's property rights is brought which relates (wholly or partly) to an infringement in respect of which the rights owner and an exclusive licensee have or had concurrent rights of action whether or not both of them are parties to the action –
  - (a) the Court shall in assessing damages take into account –
    - (i) the terms of the licence, and
    - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
  - (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
  - (c) the Court shall if an account of profits is directed apportion the profits between them as the Court considers just, subject to any agreement between them.
- (5) The owner of a performer's property rights shall notify any exclusive licensee having concurrent rights before applying for an order under Article 315 or exercising the right of seizure conferred by Article 317 and the Court may on the application of the licensee make any order under Article 315 or, as the case may be, prohibiting or

permitting the exercise by the rights owner of the right conferred by Article 317, that it thinks fit having regard to the terms of the licence.

*Performer's non-property rights and recording rights*

**314 Performer's non-property rights and recording rights: infringement actionable as breach of statutory duty**

An infringement of –

- (a) a performer's non-property rights; or
- (b) any right conferred by this Part (apart from Chapter 7) on a person having recording rights,

is actionable by the person entitled to the right as a breach of statutory duty.

*Delivery up or seizure of illicit recordings*

**315 Order for delivery up of illicit recording**

- (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 in relation to the performance under this Part (apart from Chapter 7) may apply to the Court for an order that the recording be delivered up to him or her or to any other person the Court may direct.
- (2) An application shall not be made after the end of the period specified in Article 316, 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 Article 321.
- (3) A person to whom a recording is delivered up in pursuance of an order under this Article shall, if an order under Article 321 is not made, retain it pending the making of an order, or the decision not to make an order, under that Article.
- (4) Nothing in this Article affects any other power of the Court.

**316 Period after which remedy of delivery up not available under Article 315**

- (1) Subject to paragraph (2), an application for an order under Article 315 may not be made after the end of the period of 10 years from the date on which the illicit recording in question was made.
- (2) If 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 any time before the end of the period of 10 years from the date on which he or she ceased to be under a disability or could with reasonable diligence have discovered those facts.

- (3) For the purposes of paragraph (2) a person shall be treated as under a disability while he or she is under the age of 18 years or is of unsound mind.

### **317 Right to seize illicit recordings**

- (1) An illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order under Article 315, may be seized and detained by him or her or a person authorized by him or her.
- (2) The right conferred by paragraph (1) is exercisable subject to the conditions set out in paragraphs (3), (4) and (5), and is subject to any decision of the Court under Article 321.
- (3) Before anything is seized under this Article notice of the time and place of the proposed seizure shall be given to the Connétable of the Parish in which the proposed seizure is to take place.
- (4) A person may for the purpose of exercising the right conferred by this Article enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his or hers and may not use any force.
- (5) At the time when anything is seized under this Article there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the ground on which it is made.
- (6) In this Article “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

### *Offences*

### **318 Offences: making, dealing with or using illicit recordings**

- (1) A person shall be guilty of an offence who without sufficient consent –
  - (a) makes for sale or hire;
  - (b) imports into Jersey otherwise than for his or her private and domestic use;
  - (c) possesses in the course of a business with a view to committing any act infringing the rights conferred by this Part (apart from Chapter 7); 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.
- (2) A person who infringes a performer’s making available right –
  - (a) in the course of a business; or

- (b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the making available right,  
knowing or having reason to believe that, by doing so, he or she is infringing the making available right in the recording, shall be guilty of an offence.
- (3) A person shall be guilty of an offence who causes a recording of a performance made without sufficient consent to be –
  - (a) shown or played in public; or
  - (b) communicated to the public,thereby infringing any of the rights conferred by this Part (apart from Chapter 7), if he or she knows or has reason to believe that those rights are thereby infringed.
- (4) In paragraphs (1) and (3) “sufficient consent” means –
  - (a) in the case of a qualifying performance, the consent of the performer; and
  - (b) in the case of a non-qualifying performance subject to an exclusive recording contract –
    - (i) for the purposes of paragraph (1)(a), the consent of the performer or the person having recording rights, and
    - (ii) for the purposes of paragraph (1)(b), (c) and (d) and paragraph (3), the consent of the person having recording rights.
- (5) The references in paragraph (4) 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 person, to all of them.
- (6) No offence is committed under paragraph (1) or (3) by the commission of an act which by virtue of any provision of Chapter 3 may be done without infringing the rights conferred by this Part (apart from Chapter 7).
- (7) A person guilty of an offence against paragraph (1), in any of the cases described in sub-paragraph (a), (b) or (d)(iii) thereof, or under paragraph (2) is liable to imprisonment for a term of 10 years and to a fine.
- (8) A person guilty of any other offence against this Article is liable to imprisonment for a term of 6 months and to a fine of level 3 on the standard scale.<sup>15</sup>
- (9) Where an offence against this Article committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (10) Where the affairs of a body corporate are managed by its members, paragraph (9) shall apply in relation to acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.

**319 Order for delivery up in proceedings for offence against Article 318**

- (1) The court before which proceedings are brought against a person for an offence against Article 318 may, if satisfied that at the time of 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 any other person the court may direct.
- (2) For this purpose a person shall be treated as charged with an offence when he or she is charged or is served with a summons.
- (3) An order may be made by the court of its own motion or on application by or on behalf of the Attorney General or a person presenting the case and may be made whether or not the person is convicted of the offence, but shall not be made –
  - (a) after the end of the period of 10 years from the date on which the illicit recording in question was made; or
  - (b) if it appears to the court unlikely that any order will be made under Article 321.
- (4) An appeal shall lie to the Royal Court from an order made under this Article by the Magistrate's Court.
- (5) A person to whom an illicit recording is delivered up in pursuance of an order under this Article shall retain it pending the making of an order, or the decision not to make an order, under Article 321.
- (6) Nothing in this Article affects any other powers of a court with respect to forfeiture in criminal proceedings.

**320 Offence: false representation of authority to give consent**

- (1) It is an offence for a person to represent falsely that he or she is authorized by any person to give consent for the purposes of this Part (apart from Chapter 7) in relation to a performance, unless he or she believes on reasonable grounds that he or she is so authorized.
- (2) A person guilty of an offence against this Article is liable to imprisonment for a term of 6 months and to a fine of level 3 on the standard scale.<sup>16</sup>
- (3) Where an offence against this Article committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

*Disposal or forfeiture of illicit recordings***321 Order as to disposal of illicit recording delivered up or seized under Article 315, 317 or 319**

- (1) An application may be made to the Court for an order that an illicit recording of a performance delivered up in pursuance of an order under Article 315 or 319, or seized and detained in pursuance of the right conferred under Article 317, shall be –
  - (a) forfeited to any person having performer's rights or recording rights in relation to the performance as the Court may direct; or
  - (b) destroyed or otherwise dealt with as the Court may think fit,or for a decision that no such order should be made.
- (2) In considering what order (if any) should be made, the Court shall consider whether other remedies available in an action for infringement of the rights conferred by this Part (apart from Chapter 7) would be adequate to compensate the person or persons entitled to the rights and to protect their interests.
- (3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the recording, and any such person is entitled –
  - (a) to appear in proceedings for an order under this Article, 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,and an order shall not take effect until the end of the period, specified in the rules, within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.
- (4) Where there is more than one person interested in a recording, the Court shall make an order it thinks just and may (in particular) direct that the recording be sold, or otherwise dealt with, and the proceeds divided.
- (5) If the Court decides that no order should be made under this Article, the person in whose possession, custody or control the recording was before being delivered up or seized is entitled to its return.
- (6) References in this Article to a person having an interest in a recording include any person in whose favour an order could be made in respect of the recording under –
  - (a) this Article;
  - (b) Article 143;
  - (c) Article 377; or
  - (d) Article 29(3) of the [Trade Marks \(Jersey\) Law 2000](#).
- (7) The power in the [Royal Court \(Jersey\) Law 1948](#) to make rules of court shall include the power to make rules for the purposes of this Article.

**322 Forfeiture of illicit recordings in connection with offence**

- (1) Where illicit recordings of a performance have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that

person may apply under this Article for an order for the forfeiture of the illicit recordings.

- (2) For the purposes of this Article “relevant offence” means –
  - (a) an offence against Article 318; or
  - (b) an offence involving dishonesty or deception.
- (3) An application under this Article may be made –
  - (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the illicit recordings, to that court; or
  - (b) where no application for the forfeiture of the illicit recordings has been made under sub-paragraph (a), to the Magistrate’s Court.
- (4) On an application under this Article, the court shall make an order for the forfeiture of any illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.
- (5) A court may infer for the purposes of this Article that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being part of the same consignment or batch or otherwise).
- (6) Any person aggrieved by an order made by the Magistrate’s Court under this Article, or by a decision not to make such an order, may appeal against that order or decision to the Royal Court.
- (7) An order under this Article may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.
- (8) Subject to paragraph (9), where any illicit recordings are forfeited under this Article they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this Article the court may direct that the illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performer’s rights or recording rights in question or dealt with in such other way as the court considers appropriate.

#### *General*

### **323 Presumptions relevant to recordings of performances**

- (1) In proceedings brought by virtue of this Part with respect to rights in a performance, where copies of a recording of the performance as issued to the public bear a statement that a named person was the performer, the statement shall be admissible as evidence of the fact stated and shall be presumed to be correct until the contrary is proved.
- (2) Paragraph (1) does not apply to proceedings under Article 318.
- (3) Paragraph (2) is without prejudice to the application of paragraph (1) in proceedings for an order under Article 319.

## CHAPTER 6 – LICENSING OF PERFORMER’S PROPERTY RIGHTS

### 324 “Licensing scheme” and “licensing body” etc.

- (1) In this Part a “licensing scheme” means a scheme setting out –
  - (a) the classes of case in which the operator of the scheme, or the person on whose behalf he or she acts, is willing to grant performers’ property right licences; and
  - (b) the terms on which licences would be granted in those classes of case, and for this purpose a “scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.
- (2) In this Part a “licensing body” means a society or other organization which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner of a performer’s property rights or as agent for him or her, of performers’ property right licences, and whose objects include the granting of licences covering the performances of more than one performer.<sup>17</sup>
- (3) In this Article “performers’ property right licences” means licences to do, or authorize the doing of, any of the things for which consent is required under Article 260, 261, 262 or 263.
- (4) References in this Part to licences or licensing schemes covering the performances of more than one performer do not include licences or schemes covering only –
  - (a) performances recorded in a single recording;
  - (b) performances recorded in more than one recording where –
    - (i) the performers giving the performance are the same, or
    - (ii) the recordings are made by, or by employees of or commissioned by, a single individual, firm, company or a holding company and its subsidiaries within the meaning of the [Companies \(Jersey\) Law 1991](#).

### 325 Referrals and applications in respect of licensing schemes

- (1) This Article applies to licensing schemes operated by licensing bodies in relation to a performer’s property rights which cover the performances of more than one performer, so far as they relate to licences for –
  - (a) copying a recording of the whole or any substantial part of a qualifying performance;
  - (b) making such a recording available to the public in the way mentioned in Article 263; or
  - (c) renting copies of a recording to the public.
- (2) Articles 147 to 152 shall apply to licensing schemes to which this Article applies with the following modifications –
  - (a) a reference to a licensing scheme shall be construed as a reference to a licensing scheme to which this Article applies;
  - (b) a reference to a licensing body shall be construed in accordance with Article 324(2);

- (c) the references in Article 152(2) and (7) to infringement of copyright and the owner of the copyright shall be construed, respectively, as references to infringement of performers' property rights and the owner of the performers' property rights, within the meaning of this Part.

### **326 Referrals and applications in respect of licences granted by licensing bodies**

- (1) This Article applies to licences relating to a performer's property rights which cover the performance of more than one performer granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorize –
  - (a) copying a recording of the whole or any substantial part of a qualifying performance;
  - (b) making such a recording available to the public in the way mentioned in Article 263; or
  - (c) renting copies of a recording to the public.
- (2) Articles 154 to 157 shall apply to licences to which this Article applies with the following modifications –
  - (a) a reference to a licence shall be construed as a reference to a licence to which this Article applies;
  - (b) a reference to a licensing body shall be construed in accordance with Article 324(2);
  - (c) the references in Article 157(1) to infringement of copyright and the owner of copyright shall be construed, respectively, as references to infringement of performers' property rights and the owner of the performers' property rights, within the meaning of this Part.

### **327 General considerations on referrals and applications: unreasonable discrimination**

- (1) In determining what is reasonable on a reference or application under Article 325 or 326 relating to a licensing scheme or licence, the licensing authority 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 the licensing authority's powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.
- (2) This does not affect the licensing authority's general obligation in any case to have regard to all relevant circumstances.

**328 Notification of licensing schemes**

- (1) For the purposes of Article 280 or 297, a licensing scheme is notified if the requirements of this Article have been complied with.
- (2) The person operating or proposing to operate the scheme must –
  - (a) make the scheme available for inspection, without charge, at a place in Jersey during normal office hours; or
  - (b) publish the scheme on an internet website that may be accessed by the public, without charge.
- (3) The person operating or proposing to operate the scheme must take such steps as may be reasonable to bring to the attention of persons likely to be affected by the scheme –
  - (a) the arrangements made in compliance with paragraph (2);
  - (b) the Article or Articles of this Law for the purposes of which the scheme is being notified; and
  - (c) the date the scheme comes into operation.
- (4) A scheme shall not come into operation –
  - (a) less than 8 weeks after paragraphs (2) and (3) are first complied with; or
  - (b) if the scheme is the subject of a reference under Article 147 as applied by Article 325, on any later date on which the order of the licensing authority under that Article comes into force or the reference is withdrawn.
- (5) Paragraph (3) shall be taken to have been complied with if the information required by sub-paragraphs (a) to (c) of that paragraph is published in the Jersey Gazette.
- (6) This Article applies to any modification made to a scheme as it applies to the first operation of a scheme.

**CHAPTER 7 – MORAL RIGHTS IN PERFORMANCES****329 Right to be identified as performer**

- (1) Whenever a person –
  - (a) produces or puts on a qualifying performance that is given in public;
  - (b) broadcasts live a qualifying performance;
  - (c) communicates to the public a sound recording of a qualifying performance; or
  - (d) issues to the public copies of such a recording,the performer has the right to be identified as such.
- (2) The right of the performer under this Article is –
  - (a) in the case of a performance that is given in public, to be identified in any programme accompanying the performance or in some other manner likely to bring the performer's identity to the notice of a person seeing or hearing the performance;

- (b) in the case of a performance that is broadcast, to be identified in a manner likely to bring the performer's identity to the notice of a person seeing or hearing the broadcast;
  - (c) in the case of a sound recording that is communicated to the public, to be identified in a manner likely to bring the performer's identity to the notice of a person hearing the communication;
  - (d) in the case of a sound recording that is issued to the public, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring the performer's identity to the notice of a person acquiring a copy,
- or (in any of the above cases) to be identified in such other manner as may be agreed between the performer and the person mentioned in paragraph (1).
- (3) The right conferred by this Article in relation to a performance given by a group (or so much of a performance as is given by a group) is not infringed –
    - (a) in a case falling within sub-paragraph (a), (b) or (c) of paragraph (2); or
    - (b) in a case falling within sub-paragraph (d) of that paragraph in which it is not reasonably practicable for each member of the group to be identified,if the group itself is identified as specified in paragraph (2).
  - (4) In this Article “group” means 2 or more performers who have a particular name by which they may be identified collectively.
  - (5) If the assertion under Article 330 specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.

### **330 Requirement that right conferred by Article 329 be asserted**

- (1) A person does not infringe the right conferred by Article 329 by doing any of the acts mentioned in that Article unless the right has been asserted in accordance with this Article so as to bind the person in relation to that act.
- (2) The right may be asserted generally, or in relation to any specified act or description of acts –
  - (a) by instrument in writing signed by or on behalf of the performer; or
  - (b) on an assignment of a performer's property rights, by including in the instrument effecting the assignment a statement that the performer asserts in relation to the performance his or her right to be identified.
- (3) The persons bound by an assertion of the right under paragraph (2) are –
  - (a) in the case of an assertion under paragraph (2)(a), anyone to whose notice the assertion is brought;
  - (b) in the case of an assertion under paragraph (2)(b), the assignee and anyone claiming through the assignee, whether or not he or she has notice of the assertion.
- (4) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

**331 Exceptions to right conferred by Article 329**

- (1) The right conferred by Article 329 is subject to the following exceptions.
- (2) The right does not apply where it is not reasonably practicable to identify the performer (or, where identification of a group is permitted by virtue of Article 329(3), the group).
- (3) The right does not apply in relation to any performance given for the purposes of reporting current events.
- (4) The right does not apply in relation to any performance given for the purposes of advertising any goods or services.
- (5) The right is not infringed by an act which by virtue of any of the following Articles would not infringe any of the rights conferred by Chapter 2 –
  - (a) Article 276(2);
  - (b) Article 277;
  - (c) Article 278(2);
  - (d) Article 282;
  - (e) Article 283.

**332 Right to object to derogatory treatment of performance**

The performer of a qualifying performance has a right which is infringed if –

- (a) the performance is broadcast live; or
- (b) by means of a sound recording the performance is played in public or communicated to the public,

with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

**333 Exceptions to right conferred by Article 332**

- (1) The right conferred by Article 332 is subject to the following exceptions.
- (2) The right does not apply in relation to any performance given for the purposes of reporting current events.
- (3) The right is not infringed by modifications made to a performance which are consistent with normal editorial or production practice.
- (4) Subject to paragraph (5), the right is not infringed by anything done for the purpose of –
  - (a) avoiding the commission of an offence;
  - (b) complying with a duty imposed by or under an enactment; or
  - (c) in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste or decency or which is likely to encourage or incite crime or lead to disorder or to be offensive to public feeling.
- (5) Where –

- (a) the performer is identified in a manner likely to bring his or her identity to the notice of a person seeing or hearing the performance as modified by the act in question; or
  - (b) the performer has previously been identified in or on copies of a sound recording issued to the public,paragraph (4) applies only if there is sufficient disclaimer.
- (6) In paragraph (5) “sufficient disclaimer”, in relation to an act capable of infringing the right, means a clear and reasonably prominent indication –
  - (a) given in a manner likely to bring it to the notice of a person seeing or hearing the performance as modified by the act in question; and
  - (b) if the performer is identified at the time of the act, appearing along with the identification,that the modifications were made without the performer's consent.
- (7) In paragraph (4)(b), “enactment” includes an enactment of the United Kingdom, to the extent that it applies to and has effect in Jersey.

### **334 Infringement of right conferred by Article 332 by possessing or dealing with infringing article**

- (1) The right conferred by Article 332 is also infringed by a person who –
  - (a) possesses in the course of business;
  - (b) sells or lets for hire, or offers or exposes for sale or hire; or
  - (c) distributes,an article which is, and which the person knows or has reason to believe is, an infringing article.
- (2) An “infringing article” means a sound recording of a qualifying performance with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

### **335 Duration of moral rights in performances**

- (1) A performer's rights under this Chapter in relation to a performance subsist so long as that performer's rights under Chapter 2 subsist in relation to the performance.
- (2) In paragraph (1) “performer's rights” includes rights of a performer that are vested in a successor of the performer.

### **336 Consent and waiver of moral rights in performances**

- (1) It is not an infringement of the rights conferred by this Chapter to do any act to which consent has been given by or on behalf of the person entitled to the right.
- (2) Any of those rights may be waived by instrument in writing signed by or on behalf of the person giving up the right.
- (3) A waiver –

- (a) may relate to a specific performance, to performances of a specified description or to performances generally, and may relate to existing or future performances; and
  - (b) may be conditional or unconditional and may be expressed to be subject to revocation.
- (4) A waiver made in favour of the owner or prospective owner of a performer's property rights in the performance or performances to which it relates, shall be presumed to extend to his or her licensees and successors in title unless a contrary intention is expressed.
- (5) Nothing in this Chapter shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to either of the rights conferred by this Chapter.

### **337 Application of Articles 329 to 332 to parts of performances**

- (1) The right conferred by Article 329 applies in relation to the whole or any substantial part of a performance.
- (2) The right conferred by Article 332 applies in relation to the whole or any part of a performance.

### **338 Moral rights in performances not assignable**

The rights conferred by this Chapter are not assignable.

### **339 Transmission of moral rights in performances on death**

- (1) On the death of a person entitled to a right conferred by this Chapter –
  - (a) the right passes to such person as he or she may by testamentary disposition specifically direct;
  - (b) if there is no such direction but the performer's property rights in respect of the performance in question form part of his or her estate, the right passes to the person to whom the property rights pass;
  - (c) if or to the extent that the right does not pass under sub-paragraph (a) or (b) it is exercisable by his or her personal representatives.
- (2) Where a performer's property rights pass in part to one person and in part to another, as for example where a bequest is limited so as to apply –
  - (a) to one or more, but not all, of the things to which the owner has the right to consent; or
  - (b) to part, but not the whole, of the period for which the rights subsist,any right which by virtue of paragraph (1) passes with the performer's property rights is correspondingly divided.
- (3) Where by virtue of paragraph (1)(a) or (1)(b) a right becomes exercisable by more than one person –

- (a) it is, in the case of the right conferred by Article 332, 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 Article 336 by one of them does not affect the rights of the others.
- (4) A consent or waiver previously given or made binds any person to whom a right passes by virtue of paragraph (1).
- (5) Any damages recovered by personal representatives by virtue of this Article 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 the deceased immediately before his or her death.

### **340 Remedies for infringement of moral rights in performances**

- (1) An infringement of a right conferred by this Chapter is actionable as a breach of statutory duty owed to the person entitled to the right.
- (2) Where –
  - (a) there is an infringement of a right conferred by this Chapter;
  - (b) a person falsely claiming to act on behalf of a performer consented to the relevant conduct or purported to waive the right; and
  - (c) there would have been no infringement if he or she had been so acting,that person shall be liable, jointly and severally with any person liable in respect of the infringement by virtue of paragraph (1), as if he or she personally had infringed the right.
- (3) In proceedings for infringement of the right conferred on a performer by this Chapter, it shall be a defence to prove –
  - (a) that a person claiming to act on behalf of the performer consented to the defendant's conduct or purported to waive the right; and
  - (b) that the defendant reasonably believed that the person was acting on behalf of the performer.
- (4) In proceedings for infringement of the right conferred by Article 332 the Court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the Court, dissociating the performer from the broadcast or sound recording of the performance.

## PART 7

### DESIGN RIGHT

#### CHAPTER 1 – INTRODUCTORY

#### 341 Interpretation of Part 7

(1) In this Part –

“commission” means a commission for money or money’s worth;

“competent authority” has the meaning given in Article 342(1);

“computer-generated”, in relation to a design, means that the design is generated by computer in circumstances such that there is no human designer;

“Crown use” has the meaning given in Article 342(1);

“design” means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article;

“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;

“design right” shall be construed in accordance with Article 346;

“design right owner” shall be construed in accordance with Article 343 and 378(2);

“designer”, in relation to a design, means the person who creates it and, in the case of a computer-generated design, the person by whom the arrangements necessary for the creation of the design are undertaken shall be taken to be the designer;

“exclusive licence” means a licence in writing signed by or on behalf of the design right owner authorizing 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 design right owner;

“infringing article” shall be construed in accordance with Article 344;

“joint design” means a design produced by the collaboration of 2 or more designers in which the contribution of each is not distinct from that of the other or others;

“marketing”, in relation to an article, has the meaning give in paragraph (3);

“original design” shall be construed in accordance with Article 346(3);

“qualifying country” means –

- (a) Jersey; or
- (b) so far as provision is made by Order under Article 399, a country prescribed by the Order for the purpose of extending the application of a right conferred by this Part;

“qualifying individual” means –

- (a) a British citizen;
- (b) an individual domiciled or resident in Jersey; or

- (c) so far as provision is made by Order under Article 399, an individual prescribed by the Order for the purpose of extending the application of a right conferred by this Part;

“qualifying person” means –

- (a) a qualifying individual; or
- (b) a body corporate –
  - (i) which is incorporated in a qualifying country, and
  - (ii) which has, in a qualifying country, a place of business at which substantial business is carried on,

and includes the Crown, the Chief Minister, the States, the States Assembly and the government of any other qualifying country and, in determining for the purpose of this definition whether substantial business activity is carried on at a place of business in any country, no account shall be taken of dealings in goods which are at all material times outside that country;

“semiconductor product” means an article –

- (a) the purpose, or one of the purposes, of which is the performance of an electronic function; and
- (b) which consists of 2 or more layers, at least one of which is composed of semiconducting material and in or upon one or more of which is fixed a pattern appertaining to that or another function;

“semiconductor topography” means a design which is a design of –

- (a) the pattern fixed, or intended to be fixed, in or upon –
  - (i) a layer of a semiconductor product, or
  - (ii) a layer of material in the course of and for the purpose of the manufacture of a semiconductor product; or
- (b) the arrangement of the patterns fixed, or intended to be fixed, in or upon the layers of a semiconductor product in relation to one another;

“States use” has the meaning given in Article 342(1).

- (2) References in this Part to the designer of a design shall, except as otherwise provided, be construed in relation to a joint design as references to all the designers of that design.
- (3) References in this Part to “marketing”, in relation to an article or, in the application of this Part to designs which are semiconductor topographies, to a semiconductor topography, are to its being sold or let for hire, or offered or exposed for sale or hire, in the course of a business, and related expressions shall be construed accordingly, but no account shall be taken for the purposes of this Part of marketing which is merely colourable and not intended to satisfy the requirements of the public.
- (4) References in this Part to an act being done in relation to an article “for commercial purposes” are to its being done with a view to the article in question being sold or hired in the course of a business.
- (5) Except where the context otherwise requires –

- (a) expressions used in this Part that are not defined for the purposes of this Part but are defined for the purposes of Part 1 have the same meaning as in Part 1; and
- (b) other rules of construction that apply for the purposes of Part 1 apply also for the purposes of this Part.

### **342 “Crown use”, “States use” and related expressions**

- (1) In this Part –
  - “Crown use” or “States use”, in relation to a design, means the doing of anything by virtue of Article 365 which would otherwise be an infringement of design right in the design;
  - “competent authority” means –
    - (a) in relation to Crown use, the government department of the United Kingdom by whom or on whose authority the act was done;
    - (b) in relation to States use, the Minister by whom or on whose authority the act was done.
- (2) In this Part, references to “the services of the States” or “the services of the Crown” are to –
  - (a) the defence of the British Islands;
  - (b) foreign defence purposes;
  - (c) health service purposes; and
  - (d) during a period of emergency, emergency purposes.
- (3) In this Part, any reference to the supply of articles for “foreign defence purposes” is to their supply for –
  - (a) the defence of a country outside the British Islands in pursuance of an agreement or arrangement to which the government of that country and the government of the United Kingdom are parties; or
  - (b) use by armed forces operating in pursuance of a resolution of the United Nations or one of its organs.
- (4) In this Part, any reference to the supply of articles for “health service purposes” are to their supply for the purpose of providing the following services under the [Health Insurance \(Jersey\) Law 1967](#) or under the health services of the States or, as the case requires, under the health services of the United Kingdom –
  - (a) pharmaceutical services;
  - (b) general medical services;
  - (c) general dental services.
- (5) In this Part, any reference to “emergency purposes” is a reference to any purpose which appears to the competent authority necessary or expedient –
  - (a) for the efficient prosecution of any war in which Her Majesty may be engaged;
  - (b) for the maintenance of supplies and services essential to the life of the community;

- (c) for securing a sufficiency of supplies and services essential to the well-being of the community;
  - (d) for promoting the productivity of industry, commerce and agriculture;
  - (e) for fostering and directing exports and reducing imports, or imports of any classes, from all or any countries and for redressing the balance of trade;
  - (f) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or
  - (g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any country outside Jersey which is in grave distress as the result of war.
- (6) For the purposes of this Part, a “period of emergency” begins with such date as the Lieutenant Governor declares a State of Emergency to exist under Article 11 of the [Emergency Powers and Planning \(Jersey\) Law 1990](#) and ends with such date as the Lieutenant Governor declares to be the end of a period of emergency for the purposes of this Article.

### **343 Design right owner: construction of references**

- (1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of design right in a work, the design right owner for any purpose of this Part is the person who is entitled to the right in the respect relevant for that purpose.
- (2) Where design right (or any aspect of design right) is owned by more than one person jointly, references in this Part to the design right owner are to all the owners, so that, in particular, any requirement of the licence of the design right owner requires the licence of all of them.

### **344 “Infringing article”**

- (1) In this Part “infringing article”, in relation to a design, shall be construed in accordance with this Article.
- (2) An article is an infringing article if its making to that design was an infringement of design right in the design.
- (3) An article is also an infringing article if –
  - (a) it has been or is proposed to be imported into Jersey; and
  - (b) its making to that design in Jersey would have been an infringement of design right in the design or a breach of an exclusive licence agreement relating to the design.
- (4) Where it is shown that an article is made to a design in which design right subsists or has subsisted at any time, it shall be presumed until the contrary is proved that the article was made at a time when design right subsisted.
- (5) Nothing in paragraph (3) shall be construed as applying to an article which may lawfully be imported into Jersey pursuant to any right available by virtue of Article 2(1) of the [European Union \(Jersey\) Law 1973](#).<sup>18</sup>

- (6) The expression “infringing article” does not include a design document, notwithstanding that its making was or would have been an infringement of design right.
- (7) Paragraph (6) does not apply where the design recorded in the document is a semiconductor topography.

### **345 Application to articles in kit form**

- (1) This Part applies in relation to a kit (that is, a complete or substantially complete set of components intended to be assembled into an article) as it applies in relation to the assembled article.
- (2) Paragraph (1) does not affect the question whether design right subsists in any aspect of the design of the components of a kit as opposed to the design of the assembled article.

## **CHAPTER 2 – SUBSISTENCE, OWNERSHIP AND DURATION OF DESIGN RIGHT**

### **346 Subsistence of design right**

- (1) Design right is a property right which subsists in accordance with this Part in an original design.
- (2) Design right does not subsist in –
  - (a) a method or principle of construction;
  - (b) features of shape or configuration of an article, which –
    - (i) enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function, or
    - (ii) are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part; or
  - (c) surface decoration.
- (3) A design is not “original” for the purposes of this Part if it is commonplace in the design field in question at the time of its creation.
- (4) Design right subsists in a design only if the design qualifies for design right protection –
  - (a) by reference to the designer, in accordance with Article 349, or the person by whom the design was commissioned or the designer employed, in accordance with Article 350; or
  - (b) by reference to the person by whom and country in which articles made to the design were first marketed, in accordance with Article 351.
- (5) Design right does not subsist unless and until the design has been recorded in a design document or an article has been made to the design.

**347 Who is first owner of design right**

- (1) The designer is the first owner of any design right in a design which is not created in pursuance of a commission or in the course of employment.
- (2) Where a design is created in pursuance of a commission, the person commissioning the design is the first owner of any design right in it.
- (3) Where, in a case not falling within paragraph (2), a design is created by an employee in the course of his or her employment, his or her employer is the first owner of any design right in the design.
- (4) If a design qualifies for design right protection by virtue of Article 351, the above rules do not apply and the person by whom the articles in question are marketed is the first owner of the design right.
- (5) This Article has effect, in its application to designs which are semiconductor topographies, with the following modifications –
  - (a) the addition, at the ends of paragraphs (2) and (3), of the words “subject to any agreement in writing to the contrary”; and
  - (b) the insertion after the words “the above rules do not apply and”, in paragraph (4) of the words “, subject to Article 352,”.

**348 Duration of design right**

- (1) Subject to paragraph (3), design right expires –
  - (a) 15 years from the end of the calendar year in which the design was first recorded in a design document or an article was first made to the design, whichever first occurred; or
  - (b) if articles made to the design are made available for sale or hire within 5 years from the end of that calendar year, 10 years from the end of the calendar year in which that first occurred.
- (2) The reference in paragraph (1) to articles being made available for sale or hire is to their being made so available anywhere in the world by or with the licence of the design right owner.
- (3) The design right in a semiconductor topography expires –
  - (a) 10 years from the end of the calendar year in which the topography or articles made to the topography were first made available for sale or hire anywhere in the world by or with the licence of the design right owner; or
  - (b) if neither the topography nor articles made to the topography are so made available within a period of 15 years commencing with the earlier of the time when the topography was first recorded in a design document or the time when an article was first made to the topography, at the end of that period.

*Qualification for design right protection***349 Qualification for design right protection by reference to designer**

- (1) This Article applies to a design which is not created in pursuance of a commission or in the course of employment.
- (2) A design to which this Article applies qualifies for design right protection if the designer is a qualifying individual, or in the case of a computer-generated design, a qualifying person.
- (3) A joint design to which this Article applies qualifies for design right protection if any of the designers is a qualifying individual or a qualifying person.
- (4) Where a joint design qualifies for design right protection under this Article only those designers who are qualifying individuals or qualifying persons are entitled to design right under Article 347(1).

**350 Qualification for design right protection by reference to person commissioning it or employer**

- (1) A design qualifies for design right protection if it is created in pursuance of a commission from, or in the course of employment with, a qualifying person.
- (2) Where a design is created by a person in circumstances in which, if the design was a work to which Article 182 applied, the copyright in the work would be States Assembly copyright, the States Assembly shall be regarded as the person commissioning the design.
- (3) Where a design is created by a person in circumstances in which, if the design was a work to which Article 183 applied, the copyright in the work would be States copyright, the Chief Minister shall be regarded as the person commissioning the design.
- (4) Where a design is created by a person in circumstances in which, if the design was a work to which Article 184 applied, the copyright in the work would be Crown copyright, the Crown shall be regarded as the person commissioning the design.
- (5) In the case of a joint commission or joint employment a design qualifies for design right protection if any of the persons commissioning it or employers is a qualifying person.
- (6) Where a design which is jointly commissioned or created in the course of joint employment qualifies for design right protection under this Article, only those persons commissioning it or employers who are qualifying persons are entitled to design right under Article 347(2) or (3).
- (7) In the case of a design that is a semiconductor topography created in pursuance of a commission or in the course of employment and the designer of the design is, by virtue of Article 347 as modified by paragraph (5) thereof, the first owner of design right in the design –
  - (a) paragraphs (1), (5) and (6) shall not apply; and
  - (b) Article 349(2) to (4) shall apply to the design as if it had not been created in pursuance of a commission or in the course of employment.

- (8) Article 185 shall apply to design right owned by the States Assembly by virtue of paragraph (4) and Article 347(2) as it applies to copyright owned by the States Assembly.

### **351 Qualification for design right protection by reference to first marketing**

- (1) A design which does not qualify for design right protection under Article 349 or 350 qualifies for design right protection if the first marketing of articles made to the design –
- (a) is by a qualifying person who is exclusively authorized to put such articles on the market in Jersey; and
  - (b) takes place in a qualifying country.
- (2) If the first marketing of articles made to the design is done jointly by 2 or more persons, the design qualifies for design right protection if any of those persons meet the requirements specified in paragraph (1)(a).
- (3) In such a case only the persons who meet these requirements are entitled to design right under Article 347(4).
- (4) In paragraph (1)(a) “exclusively authorized” refers –
- (a) to authorization by the person who would have been first owner of design right as designer, commissioner of the design or employer of the designer if the person had been a qualifying person, or by a person lawfully claiming under such a person; and
  - (b) to exclusivity capable of being enforced by legal proceedings in Jersey.
- (5) In the application of this Article to a design that is a semiconductor topography –
- (a) in paragraph (1)(a), for the word “Jersey” there shall be substituted the words “a qualifying country”;
  - (b) in paragraph (4)(b) the words “in Jersey” shall be deleted.

### **352 Confidential information concerning semiconductor topography**

In determining, for the purposes of Article 346(4), 348 or 351 as they apply to designs which are semiconductor topographies, whether there has been any marketing, or anything has been made available for sale or hire, no account shall be taken of any sale or hire, or any offer or exposure for sale or hire, which is subject to an obligation of confidence in respect of information about the semiconductor topography in question unless either –

- (a) the article or semiconductor topography sold or hired or offered or exposed for sale or hire has been sold or hired on a previous occasion (whether or not subject to an obligation of confidence); or
- (b) the obligation is imposed at the behest of the Crown, a Minister, or the government of any country outside Jersey, for the protection of security in connection with the production of arms, munitions or war material.

*Infringement of design right***353 Primary infringement of design right**

- (1) Subject to paragraph (2), the owner of design right in a design has the exclusive right to reproduce the design for commercial purposes –
  - (a) by making articles to that design; or
  - (b) by making a design document recording the design for the purpose of enabling such articles to be made.
- (2) Paragraph (1) does not apply, in the case of a design that is a semiconductor topography, to –
  - (a) the reproduction of a design privately for non-commercial aims; or
  - (b) the reproduction of a design for the purposes of analysing or evaluating the design or analysing, evaluating or teaching the concepts, processes, systems or techniques embodied in it.
- (3) Reproduction of a design by making articles to the design means copying the design so as to produce articles exactly or substantially to that design, and references in this Part to making articles to a design shall be construed accordingly.
- (4) Design right is infringed by a person who without the licence of the design right owner does, or authorizes another to do, anything which by virtue of this Article is the exclusive right of the design right owner.
- (5) For the purposes of this Article reproduction may be direct or indirect, and it is immaterial whether any intervening acts themselves infringe the design right.
- (6) This Article has effect subject to Chapter 3.

**354 Secondary infringement: importing or dealing with infringing article**

- (1) Design right is infringed by a person who, without the licence of the design right owner –
  - (a) imports into Jersey for commercial purposes;
  - (b) has in his or her possession for commercial purposes; or
  - (c) sells, lets for hire, or offers or exposes for sale or hire, in the course of a business,an article which is, and which he or she knows or has reason to believe is, an infringing article.
- (2) This Article has effect subject to Chapter 3.
- (3) This Article does not apply, in the case of a design which is a semiconductor topography, if the article in question has previously been sold or let for hire within the protected area, by or with the licence of the owner of design right in the semiconductor topography in question.

**355 Infringement in relation to part of semiconductor topography**

Anything which would be an infringement of the design right in a semiconductor topography if done in relation to the topography as a whole is an infringement of the design right in the topography if done in relation to a substantial part of the topography.

**CHAPTER 3 – EXCEPTIONS TO RIGHTS OF DESIGN RIGHT OWNERS****356 Chapter 3: introductory**

- (1) This Chapter specifies acts which may be done in relation to a design notwithstanding the subsistence of design right.
- (2) This Chapter relates only to the question of infringement of design right and, except as expressly provided by this Law, does not affect any other right or obligation restricting the doing of any of the specified acts.
- (3) Where it is provided by this Chapter that an act does not infringe design right, or may be done without infringing design right, and no particular description of design is mentioned, the act in question does not infringe design right in a design of any description.
- (4) No inference shall be drawn from the description of any act which may by virtue of this Chapter be done without infringing design right as to the scope of the acts restricted by the design right in any description of design.
- (5) The provisions of this Chapter are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

**357 Power to amend Chapter 3**

- (1) The States may, by Regulations, amend in this Chapter the acts which may be done in relation to any article or document notwithstanding the subsistence of design right.
- (2) Regulations under paragraph (1) may also amend this Chapter so as to provide that an agreement is void to the extent that it purports to prohibit or restrict an act which would, but for a provision of this Chapter, infringe design right.
- (3) Regulations under paragraph (1) may also amend –
  - (a) any other provision of this Law which applies or otherwise refers to any provision of this Chapter;
  - (b) any other provision of this Law, consequentially upon any amendment of this Chapter.

**358 Exceptions relating to semiconductor topographies**

It is not an infringement of design right in a semiconductor topography to –

- (a) create another original semiconductor topography as a result of an analysis or evaluation of the first topography or of the concepts, processes, systems or techniques embodied in it; or
- (b) reproduce that other topography.

**359 Infringement of copyright**

Where copyright subsists in a work which consists of or includes a design in which design right subsists, it is not an infringement of design right in the design to do anything which is an infringement of the copyright in that work.

**360 Licences of right available in last 5 years of design right**

- (1) Any person is entitled as of right to a licence to do in the last 5 years of the design right term anything which would otherwise infringe the design right.
- (2) The terms of the licence shall, in default of agreement, be settled by the licensing authority under Article 362.
- (3) This Article does not apply to a design that is a semiconductor topography.

**361 Licensee under licence of right not to claim connection with design right owner**

- (1) A person who has a licence in respect of a design by virtue of Article 360 shall not, without the consent of the design right owner –
  - (a) apply to goods which he or she is marketing, or proposes to market, in reliance on that licence any indication that he or she is the licensee of the design right owner; or
  - (b) use that indication in an advertisement in relation to those goods.
- (2) A contravention of paragraph (1) is actionable by the design right owner.
- (3) In this Article “advertisement” includes a catalogue, circular or price list.

**362 Application to settle terms of licence of right available under Article 360**

- (1) A person requiring a licence which is available as of right by virtue of Article 360 may apply to the licensing authority to settle the terms of the licence.
- (2) No application for the settlement of the terms of a licence available by virtue of Article 360 may be made earlier than one year before the earliest date on which the licence may take effect under that Article.
- (3) The terms of a licence settled by the licensing authority shall authorize the licensee to do, in the case of a licence available by virtue of Article 360, everything which would be an infringement of the design right in the absence of a licence.
- (4) Where the terms of a licence are settled by the licensing authority, the licence has effect –
  - (a) in the case of an application in respect of a licence available by virtue of Article 360 made before the earliest date on which the licence may take effect under that Article, from that date; or
  - (b) in any other case, from the date on which the application to the licensing authority was made.

**363 Settlement of terms of licence under Article 362 where design right owner unknown**

- (1) This Article applies where a person making an application under Article 362 is unable on reasonable inquiry to discover the identity of the design right owner.
- (2) The licensing authority may in settling the terms of the licence order that the licence shall be free of any obligation as to royalties or other payments.
- (3) If such an order is made the design right owner may apply to the licensing authority to vary the terms of the licence with effect from the date on which his or her application is made.
- (4) If the terms of a licence are settled by the licensing authority and it is subsequently established that a licence was not available as of right, the licensee shall not be liable in damages for, or for an account of profits in respect of, anything done before he or she was aware of any claim by the design right owner that a licence was not available.

**364 Undertaking to take licence of right in infringement proceedings**

- (1) If in proceedings for infringement of design right in a design in respect of which a licence is available as of right under Article 360 the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the licensing authority under that Article –
  - (a) no injunction shall be granted against him or her;
  - (b) no order for delivery up shall be made under Article 376; and
  - (c) the amount recoverable against him or her by way of damages or on an account of profits shall not exceed double the amount which would have been payable by him or her as licensee if such a licence on those terms had been granted before the earliest infringement.
- (2) An undertaking may be given at any time before final order in the proceedings, without any admission of liability.
- (3) Nothing in this Article affects the remedies available in respect of an infringement committed before licences of right were available.

**365 Crown use or States use of designs**

- (1) A Minister, or a person authorized in writing by a Minister, may without the licence of the design right owner –
  - (a) do anything for the purpose of supplying articles for the services of the States; or
  - (b) dispose of articles no longer required for the services of the States, and nothing done by virtue of this Article infringes the design right.
- (2) A government department of the United Kingdom, or a person authorized in writing by a government department of the United Kingdom, may without the licence of the design right owner –
  - (a) do anything for the purpose of supplying articles for the services of the Crown; or

- (b) dispose of articles no longer required for the services of the Crown, and nothing done by virtue of this Article infringes the design right.
- (3) The authorization by the competent authority in respect of States use or Crown use of a design may be given to a person either before or after the use and whether or not the person is authorized, directly or indirectly, by the design right owner to do anything in relation to the design.
- (4) A person acquiring anything sold in the exercise of powers conferred by this Article, and any person claiming under him or her, may deal with it in the same manner as if the design right were held on behalf of the Crown or the States.

### **366 Settlement of terms for Crown or States use**

- (1) Where Crown use or States use is made of a design, the competent authority shall –
  - (a) notify the design right owner as soon as practicable; and
  - (b) give the design right owner such information as to the extent of the use as he or she may from time to time require,unless it appears to the competent authority that it would be contrary to the public interest to do so or the identity of the design right owner cannot be ascertained on reasonable inquiry.
- (2) Crown use of a design shall be on such terms as, either before or after the use, are agreed between the competent authority and the design right owner with the approval of the Treasury of the United Kingdom, or, in default of agreement, such terms as are determined by the Court.
- (3) States use of a design shall be on such terms as, either before or after the use, are agreed between the competent authority and the design right owner with the approval of the Minister for Treasury and Resources or, in default of agreement, such terms as are determined by the Court.
- (4) Where the identity of the design right owner cannot be ascertained on reasonable inquiry, the competent authority may apply to the Court.
- (5) On an application under paragraph (4), the Court may order that no royalty or other sum shall be payable in respect of Crown use or States use of the design until the owner agrees terms with the competent authority or refers the matter to the Court for determination.

### **367 Rights of third parties in case of Crown use or States use**

- (1) The provisions of any licence, assignment or agreement made between the design right owner (or anyone deriving title from him or her or from whom he or she derives title) and any person other than a competent authority are of no effect in relation to Crown use or States use of a design, or any act incidental to Crown use or States use, so far as they –
  - (a) restrict or regulate anything done in relation to the design, or the use of any model, document or other information relating to it; or
  - (b) provide for the making of payments in respect of or calculated by reference to such use,

and the copying or issuing to the public of copies of any such model or document in connection with the thing done, or any such use, shall be deemed not to be an infringement of any copyright in the model or document.

- (2) Paragraph (1) shall not be construed as authorizing the disclosure of any such model, document or information in contravention of the licence, assignment or agreement.
- (3) Where an exclusive licence is in force in respect of the design –
  - (a) if the licence was granted for royalties –
    - (i) any agreement between the design right owner and the competent authority under Article 366 requires the consent of the licensee, and
    - (ii) the licensee is entitled to recover from the design right owner such part of the payment for Crown use or States use as may be agreed between them or, in default of agreement, determined by the Court;
  - (b) if the licence was granted otherwise than for royalties –
    - (i) Article 366 applies in relation to anything done which but for Article 365 and paragraph (1) would be an infringement of the rights of the licensee with the substitution for references to the design right owner of references to the licensee, and
    - (ii) Article 366 does not apply in relation to anything done by the licensee by virtue of an authority given under Article 365.
- (4) Where the design right has been assigned to the design right owner in consideration of royalties –
  - (a) Article 366 applies in relation to Crown use or States use of the design as if the reference to the design right owner included the assignor, and any payment for Crown use or States use shall be divided between them in such proportion as may be agreed or, in default of agreement, determined by the Court; and
  - (b) Article 366 applies in relation to any act incidental to Crown use or States use as it applies in relation to Crown use or States use of the design.
- (5) Where any model, document or other information relating to a design is used in connection with Crown use or States use of the design, or any act incidental to Crown use or States use, Article 366 applies to the use of the model, document or other information with the substitution for the references to the design right owner of references to the person entitled to the benefit of any provision of an agreement rendered inoperative by paragraph (1).
- (6) For the purposes of this Article an act is –
  - (a) incidental to Crown use if it is done, for the services of the Crown, to the order of the competent authority;
  - (b) incidental to States use if it is done, for the services of the States, to the order of the competent authority,by the design right owner in respect of a design.
- (7) In this Article –

“payment for Crown use or States use” means such amount as is payable by the competent authority by virtue of Article 366;

“royalties” includes any benefit determined by reference to the use of the design.

**368 Crown use or States use: compensation for loss of profit**

- (1) Where Crown use or States use is made of a design, the competent authority shall pay –
  - (a) to the design right owner; or
  - (b) if there is an exclusive licence in force in respect of the design, to the exclusive licensee,compensation for any loss resulting from his or her not being awarded a contract to supply the articles made to the design.
- (2) Compensation is payable only to the extent that such a contract could have been fulfilled from the owner's or licensee's existing manufacturing capacity, but is payable notwithstanding the existence of circumstances rendering him or her ineligible for the award of such a contract.
- (3) In determining the loss, regard shall be had to the profit which would have been made on such a contract and to the extent to which any manufacturing capacity was under-used.
- (4) No compensation is payable in respect of any failure to secure contracts for the supply of articles made to the design otherwise than for the services of the Crown or the States.
- (5) The amount payable shall, if not agreed between the design right owner or licensee and the competent authority (together with, in the case of Crown use, the approval of the Treasury of the United Kingdom, or, in the case of States use, the approval of the Minister for Treasury and Resources), be determined by the Court on a reference under Article 369, and it is in addition to any amount payable under Article 366 or 367.

**369 References of disputes relating to Crown or States use**

- (1) A dispute as to any matter which falls to be determined by the Court in default of agreement under Article 366, 367 or 368 may be referred to the Court by any party to the dispute.
- (2) In determining a dispute between the competent authority and any person as to the terms for Crown use or States use of a design the Court shall have regard to –
  - (a) any sums which that person or a person from whom he or she derives title has received or is entitled to receive, directly or indirectly, from the competent authority in respect of the design; and
  - (b) whether that person or a person from whom he or she derives title has in the Court's opinion without reasonable cause failed to comply with a request of the competent authority for the use of the design on reasonable terms.
- (3) One of 2 or more joint owners of design right may, without the concurrence of the others, refer a dispute to the Court under this Article, but shall not do so unless the others are made parties, and none of those others is liable for any other costs unless he or she takes part in the proceedings.
- (4) Where the consent of an exclusive licensee is required by Article 367(3)(a)(i) to the settlement by agreement of the terms for Crown use or States use of a design, a determination by the Court of the amount of any payment to be made for such use

shall be of no effect unless the licensee has been notified of the reference and given an opportunity to be heard.

- (5) On the reference of a dispute as to the amount recoverable as mentioned in Article 367(3)(a)(ii) the Court shall determine what is just having regard to any expenditure incurred by the licensee –
  - (a) in developing the design; or
  - (b) in making payments to the design right owner in consideration of the licence (other than royalties or other payments determined by reference to the use of the design).

## CHAPTER 4 – DEALINGS WITH DESIGN RIGHT

### 370 Assignment and licences

- (1) Design right is transmissible by assignment, by testamentary disposition or by operation of law, as moveable property.
- (2) An assignment or other transmission of design right may be partial, that is, limited so as to apply –
  - (a) to one or more, but not all, of the things the design right owner has the exclusive right to do; and
  - (b) to part, but not the whole, of the period for which the right is to subsist.
- (3) An assignment of design right is not effective unless it is in writing signed by or on behalf of the assignor.
- (4) A licence granted by the owner of design right is binding on every successor in title to his or her interest in the right, except –
  - (a) a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence; or
  - (b) a person deriving title from such a purchaser,and references in this Part to doing anything with, or without, the licence of the design right owner shall be construed accordingly.

### 371 Prospective ownership of design right

- (1) Where by an agreement made in relation to future design right, and signed by or on behalf of the prospective owner of the design right, the prospective owner purports to assign the future design right (wholly or partially) to another person, then if, on the right coming into existence, the assignee or another person claiming under him or her would be entitled as against all other persons to require the right to be vested in him or her, the right shall vest in him or her by virtue of this Article.
- (2) A licence granted by a prospective owner of design right is binding on every successor in title to his or her interest (or prospective interest) in the right, except –
  - (a) a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence; or
  - (b) a person deriving title from such a purchaser,

and references in this Part to doing anything with, or without, the licence of the design right owner shall be construed accordingly.

(3) In this Article –

“future design right” means design right which will or may come into existence in respect of a future design or class of designs or on the occurrence of a future event; and

“prospective owner” shall be construed accordingly, and includes a person who is prospectively entitled to design right by virtue of such an agreement as is mentioned in paragraph (1).

### **372 Assignment of right in registered design presumed to carry with it design right**

Where a design consisting of a design in which design right subsists is registered under the [Registered Designs \(Jersey\) Law 1957](#) and the proprietor of the registered design is also the design right owner, an assignment of the right in the registered design shall be taken to be also an assignment of the design right, unless a contrary intention appears.

### **373 Exclusive licences**

The licensee under an exclusive licence has the same rights against any successor in title who is bound by the licence as he or she has against the person granting the licence.

## **CHAPTER 5 – REMEDIES FOR INFRINGEMENT OF DESIGN RIGHT**

### **374 Rights and remedies of design right owner**

- (1) An infringement of design right is actionable by the design right owner.
- (2) In an action for infringement of design right all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as it is available in respect of the infringement of any other property right.
- (3) The Court may in an action for infringement of design right, having regard to all the circumstances and in particular to –
  - (a) the flagrancy of the infringement; and
  - (b) any benefit accruing to the defendant by reason of the infringement,award such additional damages as the justice of the case may require.
- (4) This Article has effect subject to Article 375.

### **375 Restriction of damages for innocent infringement**

- (1) Where in an action for infringement of design right brought by virtue of Article 353 it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the design right subsisted in the design to which the action relates, the plaintiff is not entitled to damages against him or her, but without prejudice to any other remedy.

- (2) Where in an action for infringement of design right brought by virtue of Article 354 a defendant shows that the infringing article was innocently acquired by him or her or a predecessor in title of his or hers, the only remedy available against the defendant in respect of the infringement is damages not exceeding a reasonable royalty in respect of the act complained of.
- (3) In paragraph (2) “innocently acquired” means that the person acquiring the article did not know and had no reason to believe that it was an infringing article.

### **376 Order for delivery up of infringing article, etc.**

- (1) Where a person –
  - (a) has in his or her possession, custody or control for commercial purposes an infringing article; or
  - (b) has in his or her possession, custody or control anything specifically designed or adapted for making articles to a particular design, knowing or having reason to believe that it has been or is to be used to make an infringing article,the owner of the design right in the design in question may apply to the Court for an order that the infringing article or other thing be delivered up to him or her or to such other person as the Court may direct.
- (2) An application shall not be made after the end of the period specified in paragraphs (3) and (4), 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 Article 377.
- (3) Subject to paragraph (4), an application for an order under this Article may not be made after the end of the period of 10 years from the date on which the article or thing in question was made.
- (4) If during the whole or any part of that period the design right owner –
  - (a) is under disability; or
  - (b) is prevented by fraud or concealment from discovering the facts entitling him or her to apply for an order,an application may be made at any time before the end of the period of 10 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.
- (5) For the purposes of paragraph (4) a person is to be treated as under a disability while he or she is under the age of 18 years or is of unsound mind.
- (6) A person to whom an infringing article or other thing is delivered up in pursuance of an order under this Article shall, if an order under Article 377 is not made, retain it pending the making of an order, or the decision not to make an order, under that Article.
- (7) Nothing in this Article affects any other power of the Court.

### **377 Order as to disposal of infringing articles**

- (1) An application may be made to the Court for an order that an infringing article or other thing delivered up in pursuance of an order under Article 376 shall be –
  - (a) forfeited to the design right owner; or

- (b) destroyed or otherwise dealt with as the Court may think fit, or for a decision that no such order should be made.
- (2) In considering what order, if any, should be made, the Court shall consider whether other remedies available in an action for infringement of design right would be adequate to compensate the design right owner and to protect his or her interests.
- (3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the article or other thing, and any such person is entitled –
  - (a) to appear in proceedings for an order under this Article, whether or not the person was served with notice; and
  - (b) to appeal against any order made, whether or not the person appeared.
- (4) An order shall not take effect until the end of the period specified by rules of court 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 article or other thing, the Court shall make such order as it thinks just and may in particular direct that the thing be sold, or otherwise dealt with, and the proceeds divided.
- (6) If the Court decides that no order should be made under this Article the person in whose possession, custody or control the article or other thing was before being delivered up or seized is entitled to its return.
- (7) References in this Article to a person having an interest in an article or other thing include any person in whose favour an order could be made in respect of it under –
  - (a) this Article;
  - (b) Article 143;
  - (c) Article 321; or
  - (d) Article 29 of the [Trade Marks \(Jersey\) Law 2000](#).
- (8) The power in the [Royal Court \(Jersey\) Law 1948](#) to make rules of court shall include the power to make rules for the purposes of this Article.

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

- (1) An exclusive licensee has, except against the design right owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.
- (2) The rights and remedies of an exclusive licensee are concurrent with those of the design right owner and references in the relevant provisions of this Part to the design right owner shall be construed accordingly.
- (3) In an action brought by an exclusive licensee by virtue of this Article 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 design right owner.

**379 Exercise of concurrent rights**

- (1) Where an action for infringement of design right brought by the design right owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the design right owner or, as the case may be, the exclusive licensee may not, without the leave of the Court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.
- (2) A design right owner or exclusive licensee who is added as a defendant in pursuance of paragraph (1) is not liable for any costs in the action unless he or she takes part in the proceedings.
- (3) Paragraphs (1) and (2) do not affect the granting of interlocutory relief on the application of the design right owner or an exclusive licensee.
- (4) Where an action for infringement of design right is brought which relates (wholly or partly) to an infringement in respect of which the design right owner and an exclusive licensee have concurrent rights of action –
  - (a) the Court shall, in assessing damages, take into account –
    - (i) the terms of the licence, and
    - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
  - (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
  - (c) the Court shall, if an account of profits is directed, apportion the profits between them as the Court considers just, subject to any agreement between them,and those provisions apply whether or not a design right owner and the exclusive licensee are both parties to the action.
- (5) The design right owner shall notify any exclusive licensee having concurrent rights before applying for an order under Article 376 and the Court may on the application of the licensee make such order under that Article as it thinks fit having regard to the terms of the licence.

**PART 8****LICENSING AUTHORITY****380 Interpretation of Part 8**

Except where the context otherwise requires –

- (a) expressions used in this Part that are not defined for the purposes of this Part but are defined for the purposes of Part 1 have the same meaning as in Part 1; and
- (b) other rules of construction that apply for the purposes of Part 1 apply also for the purposes of this Part.

**381 Licensing authority**

- (1) The Minister may by Order make provision as to who is the licensing authority.
- (2) An Order under paragraph (1) may provide that any of the following shall be the licensing authority –
  - (a) an individual or body of persons, corporate or unincorporate, appointed in accordance with the Order;
  - (b) a body established by the Order.
- (3) An Order under paragraph (1) may specify a term for which and conditions subject to which an individual or body of persons is appointed or established as the licensing authority.
- (4) An Order under paragraph (1) that provides for an individual to be the licensing authority may further provide for the appointment, for a term and subject to such conditions as are specified, of individuals to deputize for or assist that individual in the discharge of his or her functions.
- (5) An Order under paragraph (1) that provides for the establishment of a body to be the licensing authority may further provide for –
  - (a) the status of the body, that is to say, whether it is corporate or unincorporate;
  - (b) the appointment and terms of membership of its members;
  - (c) the remuneration and reimbursement of expenses of members of the body.
- (6) An Order under paragraph (1) may make such provision as may be necessary or convenient for the administration of the licensing authority, whether the authority is an individual or a body of persons, corporate or unincorporate, appointed in accordance with the Order or a body established by the Order.
- (7) An Order under paragraph (1) may provide for such of the staff of the licensing authority as are appointed or assigned to assist the authority in the discharge of its functions under this Law to have the duties, powers and functions that they are given by this Law or by the licensing authority.
- (8) An Order under paragraph (1) may further make provision –
  - (a) where the licensing authority is a body of persons, whether appointed in accordance with or established by the Order, for the composition of the body to hear any description or class of application under this Law;
  - (b) where the licensing authority is an individual for whom deputies or assistants are appointed under paragraph (4), for the individual by whom any description or class of application under this Law is to be heard; and
  - (c) for the continuation of the hearing of a matter that is part-heard before any body of persons or individual.
- (9) An Order made under paragraph (1) may further provide –
  - (a) for the construction of references in this Law to the licensing authority, where a matter is to be heard in accordance with provisions made under paragraph (8); and
  - (b) for the person hearing the matter to have, in relation to the matter, all the powers that the licensing authority has in relation to such a matter.

- (10) If no individual or body of persons is appointed or established as licensing authority or if the term specified in an Order under paragraph (1) for the appointment or establishment of an individual or body as the licensing authority has expired without renewal, or that office has been vacated without replacement, the Minister is the licensing authority.

### **382 Limitation of liability of licensing authority**

- (1) The licensing authority, any person appointed under Article 381(4), any staff referred to in Article 381(7) and any other person acting on behalf of the licensing authority are not liable in damages for anything done or omitted in the exercise or purported exercise of any function conferred on the licensing authority by this Law.
- (2) Paragraph (1) shall not apply –
  - (a) if it is shown that the act or omission was in bad faith; or
  - (b) so as to prevent an award of damages in respect of an act or omission on the ground that the act or omission was unlawful by virtue of Article 7(1) of the [Human Rights \(Jersey\) Law 2000](#).

### **383 Applications or references to licensing authority**

- (1) An application or reference made to the licensing authority under this Law shall be in the form approved by the licensing authority.
- (2) A party to an application or reference made to the licensing authority under this Law shall pay to the licensing authority the prescribed fee (if any) in respect of the application or reference.
- (3) The prescribed fees mentioned in paragraph (2) may be such as are necessary to raise sufficient income to meet –
  - (a) the costs incurred by the licensing authority in the discharge of its functions under this Law; and
  - (b) where the Minister is not the licensing authority, the costs of maintaining the licensing authority and any deputies and staff or, as the case may be, the costs of retaining the licensing authority.

### **384 Orders regulating proceedings before the licensing authority**

- (1) The Minister may by Order regulate proceedings before the licensing authority under this Law.
- (2) An Order under paragraph (1) may apply, in relation to proceedings before the licensing authority, any of the provisions of Part 2 of the [Arbitration \(Jersey\) Law 1998](#).
- (3) Without prejudice to the generality of paragraph (1), an Order under it may –
  - (a) prohibit the licensing authority entertaining a reference under Article 147, 148 or 149 (including those Articles as they are applied by any other provision of this Law) by a representative organization unless the licensing authority is satisfied that the organization is reasonably representative of the class of persons which it claims to represent;

- (b) specify the parties to any proceedings under this Law and enable the licensing authority to make a party to the proceedings any person or organization satisfying the licensing authority that they have a substantial interest in the matter; and
  - (c) require the licensing authority to give the parties to such proceedings an opportunity to state their case, in writing or orally as the Order may provide.
- (4) An Order under paragraph (1) may make provision for regulating or prescribing any matters incidental to or consequential upon any appeal from the licensing authority under Article 388, other than matters in relation to which the Court may make rules in accordance with Article 389.
- (5) An Order under paragraph (1) may make provision for and in relation to the appointment of advisers to assist the licensing authority in proceedings before the licensing authority under this Law.

### **385 Costs, proof of orders, etc.**

- (1) The licensing authority may order that the costs of a party to proceedings before the licensing authority under this Law shall be paid by such other party as the licensing authority may direct, and the licensing authority may tax or settle the amount of the costs or give directions as to the manner in which they are to be taxed.
- (2) A document purporting to be a copy of an order of the licensing authority and to be certified by the licensing authority to be a true copy shall, in any proceedings, be sufficient evidence of the order unless the contrary is proved.

### **386 Awards of interest by licensing authority**

Where the licensing authority, on an application or referral under this Law, may order or direct that an increase or reduction in any charge or payment has effect from a date earlier than the date the order or direction is given, the licensing authority may also award simple interest at such rate and for such period, beginning not earlier than the date the increase or reduction has effect and ending not later than the date of the order or direction, as the licensing authority thinks reasonable in the circumstances.

### **387 Reference of matter by licensing authority to the Court**

- (1) In any proceedings before the licensing authority on an application or reference made under this Law, the licensing authority may at any time order the whole proceedings or any question or issue (whether of fact or law) to be referred, on the terms the licensing authority may direct, to the Court.
- (2) The licensing authority shall make such an order if the parties to the proceedings agree that the licensing authority should do so.
- (3) The licensing authority shall order the whole proceedings to be referred to the Court where the licensing authority has an interest in the proceedings.
- (4) Where the Minister is the licensing authority, he or she shall also order the whole proceedings to be referred to the Court where the States have an interest in the proceedings.
- (5) On a reference under this Article –

- (a) the Court may exercise any power available to the licensing authority by virtue of this Law as respects the matter referred to the Court and, following its determination, may refer any matter back to the licensing authority; and
  - (b) any decision, determination or order made by the Court in the exercise of a power referred to in sub-paragraph (a) shall be taken under this Law to be a decision, determination or order, as the case may be, made by the licensing authority.
- (6) In this Article “States” means –
  - (a) the Assembly of the States;
  - (b) any Minister;
  - (c) any committee established by or under [Standing Orders of the States of Jersey](#).

### **388 Appeal to Court from decision of licensing authority**

An appeal to the Court lies on any point of fact or law or of mixed fact or law arising from a decision of the licensing authority on an application or reference made under this Law.

### **389 Rules of court**

- (1) The power to make rules of court under the [Royal Court \(Jersey\) Law 1948](#) shall include a power to make rules in relation to matters referred to the Court under Article 387 and appeals under Article 388.
- (2) Without prejudice to the generality of paragraph (1), the power to make rules of court under the [Royal Court \(Jersey\) Law 1948](#) shall include a power to make rules –
  - (a) limiting the time within which an appeal under Article 388 may be brought;
  - (b) for suspending, or authorizing or requiring the licensing authority to suspend, the operation of orders of the licensing authority in cases where the licensing authority’s decision is appealed against;
  - (c) for modifying in relation to an order of the licensing authority whose operation is suspended the operation of any provision of this Law as to the effect of the order; and
  - (d) for the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the licensing authority are informed of its suspension.
- (3) The licensing authority shall comply with any requirement imposed by the Court pursuant to rules made under paragraph (2).

## **PART 9**

### **GENERAL AND CLOSING**

### **390 Interpretation of Part 9**

Except where the context otherwise requires –

- (a) expressions used in this Part that are not defined for the purposes of this Part but are defined for the purposes of Part 1 have the same meaning as in Part 1; and
- (b) other rules of construction that apply for the purposes of Part 1 apply also for the purposes of this Part.

### **391 Rights and privileges under other enactments or the customary law**

- (1) Nothing in this Law affects –
  - (a) a right or privilege of a person under any enactment (except where the enactment is expressly repealed, amended or modified by this Law and subject to any transitional provisions made in respect thereof under Article 408);
  - (b) a right or privilege of the Crown subsisting otherwise than under statutory provision;
  - (c) a right or privilege of the States Assembly;
  - (d) a right of the Agent of the Impôts to sell, use or otherwise deal with articles forfeited under the laws relating to customs and excise; or
  - (e) the operation of a rule of customary law relating to breaches of trust or confidence.
- (2) Subject to the savings in paragraph (1), no copyright or right in the nature of copyright subsists otherwise than by virtue of this Law or another statutory provision in that behalf.
- (3) Nothing in this Law affects any rule of customary law preventing or restricting the enforcement of any right conferred by this Law, on grounds of public interest or otherwise.
- (4) Nothing in this Law affects a right of action or other remedy, whether civil or criminal, available otherwise than under this Law in respect of acts infringing any of the moral rights conferred by this Law.
- (5) The savings in paragraph (1) have effect subject to Articles 186(3) and 187(4).

### **392 Civil and criminal liability of service providers in respect of infringements of rights**

The Schedule has effect –

- (a) to specify circumstances in which a person providing an information society service is not liable for any specified remedies (pecuniary or otherwise) in civil proceedings or is not liable to any criminal sanction that may, apart from the Schedule, be imposed for infringement of any right conferred by this Law to which the Schedule is expressed to apply or any right to which the application of the Schedule is extended by Regulations under Article 406;
- (b) to confer powers on a court to grant injunctive relief against a service provider where, in the circumstances specified, a right to which the Schedule applies is infringed.

**393 Territorial extent, Jersey ships**

- (1) For the purposes of this Law the territorial waters of Jersey shall be treated as part of Jersey.
- (2) This Law shall apply to things done on a Jersey ship, within the meaning of the [Shipping \(Jersey\) Law 2002](#), as it applies to things done in Jersey.

**394 Ministers' powers of delegation**

- (1) Without prejudice to the general power conferred by Article 28 of the [States of Jersey Law 2005](#) –
  - (a) the Minister may delegate, wholly or partly, to any individual or body, any function conferred upon or vested in the Minister by this Law, including the function of being the licensing authority;
  - (b) the Chief Minister may delegate, wholly or partly, to any individual or body, his or her functions as the owner of any right, conferred by this Law, in any work or other matter.
- (2) Paragraph (1) does not authorize a Minister to delegate any power to make an enactment under this Law.
- (3) The delegation of functions by a Minister under this Article shall not prevent that Minister exercising those functions personally.
- (4) The Chief Minister may, by Order, establish a body to which his or her functions may be delegated under paragraph (1)(b).
- (5) An Order under paragraph (4) may further contain provisions as to the legal capacity of the body established by the Order, including, but not by way of limitation, its rights, powers and liabilities.

**395 Limitation of liability of Minister**

- (1) The Minister, and any delegate or other person acting on behalf of the Minister is not liable in damages for anything done or omitted in the exercise or purported exercise of any function conferred on the Minister by this Law.
- (2) Paragraph (1) shall not apply –
  - (a) if it is shown that the act or omission was in bad faith; or
  - (b) so as to prevent an award of damages in respect of an act or omission on the ground that the act or omission was unlawful by virtue of Article 7(1) of the [Human Rights \(Jersey\) Law 2000](#).

**396 Requirement of signature: application to body corporate**

- (1) The requirement in the following definitions and provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal –
  - (a) in Part 1 –
    - (i) in the definition “exclusive licence” in Article 2(1),

- (ii) Article 106(3)(b), and
  - (iii) Articles 118(3) and 119(1) (including those provisions as applied by any other provision of this Law);
- (b) in Part 6, Articles 299(3), 300(1) and 301;
- (c) in Part 7 –
  - (i) in the definition “exclusive licence” in Article 341(1),
  - (ii) Articles 370(3) and 371(1).
- (2) The requirement in the following provisions that an instrument be signed by a person is also satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal –
  - (a) in Part 1, Articles 106(2)(b) and 115(2);
  - (b) in Part 6, Articles 330(2) and 336(2).

### 397 Investigations by inspectors

- (1) Inspectors shall have the duty to investigate offences against this Law.
- (2) Article 3 of the 2008 Law shall apply for the purposes of the discharge of the duty imposed by paragraph (1) as it applies for the purpose of determining whether Regulations under that Law have been complied with.
- (3) Articles 4, 7 and 8 of the 2008 Law shall apply in relation to the exercise of the powers conferred by Article 3 of that Law as applied by paragraph (2).
- (4) This Article shall not be read as authorizing an inspector to prosecute an offence against this Law.
- (5) In this Article –
  - “2008 Law” means the [Price and Charge Indicators \(Jersey\) Law 2008](#);
  - “inspector” has the same meaning as in the 2008 Law.

### 398 Search warrants

- (1) Where the Bailiff or a Jurat is satisfied by information on oath given by a police officer that there are reasonable grounds for believing –
  - (a) that an offence against a provision listed in paragraph (5) has been or is about to be committed in any premises; and
  - (b) that evidence that the offence has been or is about to be committed is in those premises,he or she may issue a warrant authorizing a police officer to enter and search the premises, using any reasonable force necessary.
- (2) The power conferred by paragraph (1) does not extend to authorizing a search for materials of the kinds mentioned in Article 16(2) of the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#).
- (3) A warrant under this Article –

- (a) may authorize persons to accompany any police officer executing the warrant; and
  - (b) remains in force for 28 days from the date of its issue.
- (4) In executing a warrant issued under this Article a police officer may seize an article if he or she reasonably believes that it is evidence that any offence against a provision listed in paragraph (5) has been or is about to be committed.
- (5) The provisions mentioned in paragraphs (1) and (4) are –
  - (a) Article 139(1), (2) or (3), including those provisions as they are applied by Articles 82(2) and 224;
  - (b) Article 235(1), (2), (3) or (4);
  - (c) Article 251(1);
  - (d) Article 318(1) or (2).
- (6) In this Article “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

### **399 Orders: extension of protection to qualifying individuals, etc.**

- (1) The Minister may, for the purpose of extending the application of any right conferred by this Law, prescribe individuals, persons and countries who are to be qualifying individuals, qualifying persons and qualifying countries for the purposes of all or any of the provisions of this Law.
- (2) An Order under paragraph (1) may –
  - (a) modify any provision of this Law in its application to any description or class of individuals, persons or countries prescribed under it;
  - (b) make different provision for different descriptions and classes of works, performances and designs;
  - (c) contain transitional provisions and savings in respect of the extension, by the Order, of any right conferred by this Law; and
  - (d) without prejudice to the generality of paragraph (1) and of Article 11(4) of the [Interpretation \(Jersey\) Law 1954](#), prescribe as qualifying countries such countries as are, from time to time, parties to a convention or agreement, specified in the Order, which concerns the protection of unregistered rights in intellectual property and which either extends to Jersey or the extension to Jersey of which is contingent upon the Order being made.

### **400 Orders: general provisions**

- (1) The Minister may by Order make provision for the purpose of carrying this Law into effect.
- (2) Without prejudice to the generality of paragraph (1), an Order made under it may make provision for or with respect to any matter that shall or may be prescribed for the purposes of any provision of this Law by Order of the Minister.
- (3) An Order made under this Law may, instead of, or as well as, making separate provision, provide that a statutory instrument made under a corresponding provision

of the Copyright, Designs and Patents Act 1988 of the United Kingdom shall have effect in Jersey as part of the law of Jersey, subject to any exceptions and modifications specified in the Order.

- (4) An Order made under this Law may contain such transitional, saving, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the Order.

#### **401 Regulations: international conventions and EU Treaties<sup>19</sup>**

- (1) The States may by Regulations amend this Law –
- (a) for the purpose of giving effect in Jersey to any international convention ratified by or on behalf of Jersey or which, by its extension to the United Kingdom, also extends to Jersey, or for the purpose of enabling the ratification or extension of any international convention;
  - (b) for the purpose of implementing, in Jersey, any obligation of the United Kingdom under the EU Treaties, whether or not that obligation applies to Jersey.<sup>20</sup>
- (2) The power in paragraph (1)(b) does not derogate from any power to amend this Law that arises under the [European Union Legislation \(Implementation\) \(Jersey\) Law 2014](#).<sup>21</sup>
- (3) Regulations under paragraph (1) may also make amendments to other enactments that are consequential upon or supplemental to the amendments to this Law made under that paragraph.

#### **402 Regulations: unidentified and lost rights owners**

- (1) The States may by Regulations amend this Law to provide for the establishment or extension of the application of schemes for the purpose of licensing or otherwise authorizing the doing of any act which would, apart from the licence or other authorization, be an act restricted by a right conferred by this Law where –
- (a) the identity of the owner of the right is not known; or
  - (b) the identity of the owner of the right is known, but the owner cannot be found.
- (2) Regulations under paragraph (1) may –
- (a) impose requirements as to the efforts that must be made to identify or find the owner of the right before any licence or other authorization is given;
  - (b) require the payment of a royalty for a licence or other authorization given under a scheme;
  - (c) provide that a person who acts in accordance with a licence or other authorization given under a scheme shall not be liable for infringement of the right conferred by this Law to which the licence or authorization relates or guilty, by reason of the act, of specified offences against this Law;
  - (d) require that a register of licences or other authorizations given under a scheme is kept and made available to the public;
  - (e) provide for the owner of the right being found, including –

- (i) the consequences for persons holding a licence or other authorization under a scheme,
  - (ii) the payment to the owner of the right of royalties collected or due under the scheme;
- (f) extend or restrict the jurisdiction of the licensing authority.
- (3) Regulations under paragraph (1) may require the payment of the royalty to be made at the time the licence or other authorization is given or make the payment contingent upon the owner of the right being found.
- (4) Where Regulations under paragraph (1) require the payment of the royalty at the time the licence or other authorization is given, they may further provide for the use to which the payments received may be put if the owner of the right is not found within a specified period of time following the making of the payment.
- (5) Where Regulations under paragraph (1) make the payment of a royalty contingent upon the owner of the right being found, they may further require the person to whom the licence or other authorization is given to guarantee the payment in a manner permitted by the Regulations.

#### **403 Regulations: extension of application of licensing arrangements**

- (1) The States may by Regulations amend this Law so as to provide that where –
  - (a) the owner of a right conferred by this Law has not transferred management of that right to a licensing body; and
  - (b) there exists a licensing body that represents a substantial number of owners of rights of the same description,the licensing body is deemed to be mandated to manage the owner's right.
- (2) Regulations under paragraph (1) –
  - (a) shall confer the same right to royalties on the owner whose right is subject to such imposed management as is enjoyed by owners of rights of the same description who have transferred management of them to the licensing body;
  - (b) may restrict the time within which an owner whose right is subject to such imposed management may claim such royalties; and
  - (c) may confer a right on an owner of a right to veto the operation of a deemed mandate.

#### **404 Regulations: codes of practice for licensing bodies**

- (1) The States may by Regulations require a licensing body to adopt a code of practice which complies with requirements set out in the Regulations.
- (2) Regulations under paragraph (1) may in particular make provision requiring a code of practice to include –
  - (a) provision relating to any matter to which Regulations under Regulations 402 or 403 may relate;
  - (b) provision for a person to be appointed to represent the interests of persons dealing with the body in any capacity.

- (3) Regulations under paragraph (1) may provide that in the case of a licensing body that fails to adopt a code of practice in accordance with the Regulations, a code of practice approved by the Minister or by a person designated under the Regulations by the Minister has effect as a code of practice adopted by the body.
- (4) The powers conferred by paragraph (1) are exercisable only so as to make provision applying in relation to a licensing body –
  - (a) for the purposes of provision made under Article 402 or Article 403 as it applies to that body; or
  - (b) where it appears to the Minister that the body's system of self-regulation is failing to protect the interests of owners of copyright or any other right conferred by this Law, licensees, prospective licensees or the public.
- (5) Regulations made under paragraph (1) may further establish –
  - (a) procedures to be followed before any requirement to be imposed under paragraph (1) applies in relation to a licensing body;
  - (b) where such provision applies by virtue of sub-paragraph (4)(b), procedures to be followed before such provision ceases to apply in relation to a licensing body.
- (6) Regulations under paragraph (1) may further provide for the consequences of a failure by a licensing body or other person to comply with –
  - (a) a code of practice which has effect, by virtue of the Regulations, in relation to the body or other person;
  - (b) an authorization given to the body or other person under Article 402 or 403; or
  - (c) a requirement imposed by the Regulations.
- (7) Regulations under paragraph (1) may in particular provide for the imposition of financial penalties.
- (8) Regulations under paragraph (1) may further include provision –
  - (a) for determining whether there has been a failure to comply with anything mentioned in paragraph (6);
  - (b) for determining any penalty that may be imposed pursuant to paragraph (7) in respect of the failure; and
  - (c) for an appeal against the imposition of any such penalty.
- (9) Regulations under paragraph (1) may provide for a determination within paragraph (8)(a) or (b) to be made by the Minister or by a person designated by the Minister under the Regulations.
- (10) Regulations under paragraph (1) may make provision for requiring a person to give the person by whom a determination within paragraph (8)(a) falls to be made (the “adjudicator”) any information that the adjudicator reasonably requires for the purpose of making that determination.
- (11) Regulations under paragraph (1) may require a licensing body to which the Regulations apply to pay fees to the Minister.

- (12) The aggregate amount of fees payable under the Regulations must not be more than the cost to the Minister of administering the operation of Regulations under this Article.

#### **405 Regulations: notification or advertisement of licensing schemes**

In addition to any requirement imposed by this Law for a licensing body to notify the Minister of or publish any licensing scheme, the States may by Regulations require licensing bodies to notify the Minister of or to publish information regarding schemes operated by them.

#### **406 Regulations and Orders: power to amend the Schedule**

- (1) The States may by Regulations amend the Schedule.
- (2) Without prejudice to the generality of paragraph (1), Regulations made under it may amend the Schedule so as to extend its application to all or any of the rights conferred by the [Patents \(Jersey\) Law 1957](#), the [Registered Designs \(Jersey\) Law 1957](#) and the [Trade Marks \(Jersey\) Law 2000](#).
- (3) Regulations which extend the application of the Schedule to all or any of the rights mentioned in paragraph (2)(a) may also amend any enactment there mentioned consequentially upon the extension.
- (4) Without prejudice to the generality of paragraph (1), the Minister may, by Order, amend in the Schedule –
- (a) the period within which or the time by which anything must or may be done under it; and
  - (b) the contents and form of, and manner and place for service of, any notice that must or may be given under it.

#### **407 Regulations: power to amend enactments**

The States may by Regulations amend any enactments consequentially upon the enactment of this Law.

#### **408 Regulations: application, transitional provisions and savings**

- (1) The States may by Regulations –
- (a) make provision for the application of this Law or of any amendment of this Law;
  - (b) make transitional provisions and savings in respect of the commencement of this Law or in respect of the commencement of any amendment of this Law.
- (2) Regulations under paragraph (1) may revive expired rights in intellectual property, with or without modification.
- (3) If Regulations made under paragraph (2) come into force on a day before notice has been published, as required by Article 3 of the [Official Publications \(Jersey\) Law 1960](#), the Regulations shall not operate so as to –

- (a) affect, in a manner prejudicial to any person (other than the States) the rights of that person existing before the date the notice is published; or
- (b) impose liabilities on any person (other than the States) in respect of anything done or omitted to be done before the date the notice is published.

#### **409 Regulations and Orders: general provisions**

- (1) Regulations and Orders made under this Law may contain such transitional, saving, consequential, incidental or supplementary provisions as appear to the States or the Minister, as the case may be, to be necessary or expedient for the purposes of the Regulations or Order.
- (2) Regulations made under Articles 401, 402, 403, 404, 405 or 406 may create an offence punishable by imprisonment for up to 2 years or a fine of up to level 3 on the standard scale, or both.<sup>22</sup>
- (3) A power to amend any provision of this Law by Regulations does not include the power to amend a provision of this Law that confers such a power.

#### **410 Citation**

This Law may be cited as the Intellectual Property (Unregistered Rights) (Jersey) Law 2011.

## SCHEDULE

(Article 392)

### LIABILITY OF AND REMEDIES AGAINST SERVICE PROVIDERS

#### 1 Interpretation of Schedule

- (1) In this Schedule, unless the context otherwise requires –
- “counter notice” means a notice substantially complying with the requirements of paragraph 12;
- “notice of alleged infringement” means a notice substantially complying with the requirements of paragraph 10;
- “owner”, in relation to material stored in an information society service, means the recipient of the service at whose direction the material is stored;
- “recipient of the service” means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking material or making it accessible;
- “sender” means the person who has served a notice of alleged infringement;
- “service provider” means any person providing an information society service;
- “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is observed as a bank holiday pursuant to the [Public Holidays and Bank Holidays \(Jersey\) Law 1951](#).
- (2) The provisions of this Schedule conferring limited liability are to be construed independently of each other; so the fact that an act or circumstance does not fall within one provision does not mean that it is not covered by another provision.

#### 2 Rights to which this Schedule applies

- (1) This Schedule applies to any right conferred by Part 1 of this Law (referred to in this Schedule as a “right to which this Schedule applies”).
- (2) Accordingly, in this Schedule –
- (a) “material” means any matter in which a right to which this Schedule applies subsists;
- (b) a reference to material being unlawful means that it infringes a right to which this Schedule applies; and
- (c) a reference to activity being unlawful means that the activity, when applied to material, infringes a right to which this Schedule applies.

#### 3 Mere conduit

- (1) This paragraph applies where –

- (a) a service provider provides an information society service which consists of the transmission in a communication network of material or the provision of access to such a network; and
  - (b) material is transmitted in the network and the service provider –
    - (i) did not provide the material contained in the transmission,
    - (ii) did not initiate the transmission,
    - (iii) did not select the receiver of the transmission, and
    - (iv) did not select or modify the material contained in the transmission.
- (2) The service provider shall not (if the service provider otherwise would) be liable for damages or any other pecuniary sanction or any criminal sanction for infringement of a right to which this Schedule applies as a result of the transmission or the provision of access.
- (3) The acts of transmission and of provision of access referred to in this paragraph include the automatic, intermediate and transient storage of the material transmitted where –
  - (a) this takes place for the sole purpose of carrying out the transmission in the communication network; and
  - (b) the material is not stored for any period longer than is reasonably necessary for the transmission.

#### **4 Hosting**

- (1) This paragraph applies where –
  - (a) a service provider provides an information society service which consists of the storage of material provided by recipients of the service; and
  - (b) a recipient of the service, who is not acting under the authority or control of the service provider, provides material for storage in the service.
- (2) The service provider shall not (if the service provider otherwise would) be liable for damages or any other pecuniary sanction or any criminal sanction for infringement of a right to which this Schedule applies as a result of storing the material if –
  - (a) the service provider does not have actual knowledge that the stored material or activity associated with it is unlawful;
  - (b) upon obtaining actual knowledge that the stored material or activity associated with it is unlawful, acts promptly to remove or disable access to the stored material; or
  - (c) following the service of a notice of alleged infringement on the service provider in respect of the stored material, the service provider has complied with paragraph 11(3) or (7) or, by virtue of another provision of this Schedule, is not required to comply with it.
- (3) The service provider shall not (if the service provider otherwise would) be liable for damages or any other pecuniary sanction or any criminal sanction as a result of acting in accordance with sub-paragraph (2)(b) or as described in sub-paragraph (2)(c).
- (4) The service provider shall not (if the service provider otherwise would) be liable for damages or any other pecuniary sanction or any criminal sanction where, in the

course of acting in accordance with sub-paragraph (2)(b) or as described in sub-paragraph (2)(c), the service provider also removes or disables access to other material stored in its information society service and cannot reasonably avoid doing so.

- (5) The service provider shall not (if the service provider otherwise would) be liable for damages or any other pecuniary sanction or any criminal sanction for infringement of a right to which this Schedule applies, as a result of reinstating or re-enabling access to stored material, or permitting its reinstatement, in compliance with paragraph 13(2)(b).

## 5 Caching

- (1) This paragraph applies where –
- (a) a service provider provides an information society service which consists of the transmission in a communication network of material; and
  - (b) the material is cached, that is to say –
    - (i) it is the subject of automatic, intermediate and temporary storage in the service, for the sole purpose of making more efficient onward transmission of the material to recipients of the service upon their request, and
    - (ii) the service provider –
      - (A) did not provide the material,
      - (B) does not modify the material,
      - (C) complies with conditions on access to the material,
      - (D) complies with any rules regarding the updating of the material, specified in a manner widely recognized and used by industry, and
      - (E) does not interfere with the lawful use of technology, widely recognized and used by industry, to obtain data on the use of the material.
- (2) The service provider shall not (if the service provider otherwise would) be liable for damages or any other pecuniary sanction or any criminal sanction for infringement of a right to which this Schedule applies, as a result of the caching or onward transmission of the material if the service provider –
- (a) does not have actual knowledge –
    - (i) that the source material (the material at the initial source of transmission of the cached material) has been removed from the network or access to it disabled, by reason of the source material or activity associated with it being unlawful, or
    - (ii) that a court or tribunal or an authority acting in the discharge of functions conferred on it by law has ordered the removal of the source material or the disablement of access to it; or
  - (b) upon obtaining the knowledge described in clause (a) in respect of the source material, promptly removes the cached material or disables access to it.

- (3) The service provider shall not (if the service provider otherwise would) be liable for damages or any other pecuniary sanction or any criminal sanction as a result of acting in accordance with sub-paragraph (2)(b).
- (4) The service provider shall not (if the service provider otherwise would) be liable for damages or any other pecuniary sanction or any criminal sanction where, in the course of acting in accordance with sub-paragraph (2)(b), the service provider also removes or disables access to other material cached in its information society service and cannot reasonably avoid doing so.

## **6 Links**

- (1) This paragraph applies where –
  - (a) a service provider provides an information society service which consists of the provision for recipients of the service of an electronic link from which third party material may be accessed (whether or not the link is provided when a search engine or any other electronic aid provided by the service provider is used by a recipient of the service to search for third party material); and
  - (b) third party material or activity associated with third party material which in either case originates from a person who is not acting under the authority or control of the service provider is accessed by a recipient of the service by means of the link.
- (2) The service provider shall not (if the service provider otherwise would) be liable for damages or any other pecuniary sanction or any criminal sanction for infringement of a right to which this Schedule applies as a result of the material or activity accessed by means of the link where the service provider –
  - (a) does not have actual knowledge that the material or activity is unlawful; or
  - (b) upon obtaining such knowledge acts promptly to remove the link.
- (3) The service provider shall not (if the service provider otherwise would) be liable for damages or any other pecuniary sanction or any criminal sanction as a result of acting in accordance with sub-paragraph (2)(b).
- (4) The service provider shall not (if the service provider otherwise would) be liable for damages or any other pecuniary sanction or any criminal sanction where, in the course of acting in accordance with sub-paragraph (2)(b), the service provider also removes another link and cannot reasonably avoid doing so.

## **7 Service provider not obliged to monitor material**

- (1) Nothing in paragraph 3, 4 or 5 shall be construed as imposing an obligation on service providers, when providing an information society service, to monitor the material which they transmit or store, nor actively to seek facts or circumstances indicating unlawful activity.
- (2) Nothing in paragraph 6 shall be construed as imposing an obligation on service providers, when providing access to third party material by means of an electronic link (whether or not the link is provided when a search engine or any other electronic aid provided by the service provider is used by a recipient of the provider's information society service to search for third party material), to monitor that material, nor actively to seek facts or circumstances indicating unlawful activity.

- (3) This paragraph does not derogate from any obligation imposed by or under the [Regulation of Investigatory Powers \(Jersey\) Law 2005](#).

## **8 Defence in criminal proceedings: burden of proof**

- (1) This paragraph applies where a service provider charged with an offence in criminal proceedings arising out of any transmission, or provision of access, storage, retrieval or links falling within paragraph 3, 4, 5 or 6 relies on a defence under any of those paragraphs.
- (2) Where evidence is adduced which is sufficient to raise an issue with respect to that defence, the court shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

## **9 Duty of service provider to provide means of contact, etc.**

- (1) A service provider shall make available to recipients of its information society service –
- (a) at least one address at which the service provider may be contacted promptly and effectively; and
  - (b) a statement of the service provider's policy for the termination of the accounts of, or access to the service by, recipients of the service or account holders whose material or activity is unlawful.
- (2) The information required by sub-paragraph (1) shall be made available in a location, form and manner that is easily, directly and permanently accessible.
- (3) In the case of a service provider to which paragraph 4 applies, at least one address made available in accordance with sub-paragraph (1)(a) shall be clearly identified as an address at which notices that may be served under this Schedule may be served on the service provider.
- (4) A service provider which does not comply with sub-paragraphs (1) and (2) shall not have the limited liability conferred by paragraphs 5 and 6.
- (5) A service provider described in paragraph 4(1)(a) which does not comply with sub-paragraphs (1), (2) and (3) shall not have the limited liability conferred by paragraph 4.

## **10 Notice of alleged infringement**

- (1) A notice of alleged infringement is a notice served –
- (a) on a service provider described in paragraph 4(1)(a);
  - (b) by a person alleging that material stored in the service provider's information society service at the direction of a recipient of the service, or activity associated with the material, infringes a right to which this Schedule applies and which is actionable by the person.
- (2) Where the service provider has identified an address in accordance with paragraph 9(3), the notice must be served on the service provider at that address.
- (3) The notice shall be signed by the sender and –

- (a) identify the material described in sub-paragraph (1)(b);
- (b) identify the work or other matter in which the right to which this Schedule applies subsists which the sender claims to be infringed by the material or activity;
- (c) describe the nature of the alleged infringement, specifying –
  - (i) whether it is the material that is claimed to be unlawful or activity associated with the material, or both, and
  - (ii) the rights claimed to be infringed;
- (d) provide sufficient detail of the material as to enable the service provider to identify and locate it without undue effort;
- (e) give –
  - (i) the full name and address of the sender,
  - (ii) at least one address at which the sender may be contacted promptly and effectively;
- (f) clearly identify at least one address provided under clause (e)(ii) as an address at which notices to be served on the sender under this Schedule may be served on the sender; and
- (g) contain a statement that the sender –
  - (i) believes, in good faith, that the material or activity infringes a right to which this Schedule applies which is actionable by the sender,
  - (ii) believes, in good faith, that the information contained in the notice is correct and that the notice is not misleading, and
  - (iii) is aware of his or her liability under paragraph 15.

## **11 Actions by service provider following service of notice of alleged infringement**

- (1) Where a notice of alleged infringement is served on a service provider, the service provider shall, before the expiry of the first working day following the day on which the notice is received –
  - (a) notify the owner of the material –
    - (i) that the notice of alleged infringement has been served,
    - (ii) of the time by which the service provider is required by sub-paragraph (3) to remove or disable access to the material,
    - (iii) of the owner of the material's right to serve a counter notice and of the requirements of paragraph 12,
    - (iv) of the service provider's address identified in accordance with paragraph 9(3), and
    - (v) of the actions that the service provider is and is not required by paragraph 13 to take following service of a counter notice; and
  - (b) provide the owner of the material with a copy of the notice of alleged infringement.

- (2) Where the owner of the material has provided the service provider with an address at which the owner may be contacted promptly and effectively, the service provider shall send the notice and copy required by sub-paragraph (1) to that address.
- (3) Subject to sub-paragraphs (4) and (5) and paragraph 13(1), where a notice of alleged infringement is served on a service provider, the service provider shall remove or disable access to the material before the expiry of the second working day following the day on which the notice is received or, if that is not reasonably practicable, as soon as possible after that.
- (4) The service provider shall not be required to act under sub-paragraph (3) if the material has already been removed or access to it disabled.
- (5) Subject to sub-paragraphs (6) and (7), where a person who has served a notice of alleged infringement on a service provider serves, within the period of 3 months, a second or subsequent notice of alleged infringement on the service provider in relation to substantially the same material, located in substantially the same place, as the material to which the earlier notice related, the service provider –
  - (a) shall not be required to take any action under sub-paragraph (1), (2) or (3); and
  - (b) shall promptly notify that person that it is not required to take that action.
- (6) Sub-paragraph (5) shall not apply where the person serving the second or subsequent notice of alleged infringement also serves on the service provider a notice, substantially complying with paragraph 13(3), that the person has commenced proceedings against the owner of the material in respect of the infringement to which the notice of alleged infringement relates.
- (7) Where a second or subsequent notice of alleged infringement is served on a service provider in relation to substantially the same material, located in substantially the same place, as material to which the earlier notice of alleged infringement related, and the material has been restored to that location through the operation of an automated process forming part of the service provider's information society service, the service provider –
  - (a) shall not be required to take any action under sub-paragraph (1), (2) or (3);
  - (b) shall remove or disable access to the material before the end of the first working day following the day on which the notice is served, or, if that is not reasonably practicable, as soon as possible after that; and
  - (c) shall promptly notify the sender that the material was restored through the operation of an automated process and of its removal or disablement.

## **12 Service of counter notice by owner**

- (1) An owner of material notified by a service provider of the service of a notice of alleged infringement may serve a counter notice on the service provider at the address identified in accordance with paragraph 9(3).
- (2) A counter notice shall be signed by the owner and contain –
  - (a) an explanation why the material or activity, or both, to which the notice of alleged infringement relates does not infringe a right to which this Schedule applies which the sender alleges is actionable by him or her;

- (b) sufficient detail of the identity of the material and either of its location or, if it has been removed by the service provider, of its location before removal, as to enable the service provider to identify and locate it and, as required, reinstate it or re-enable access to it, without undue effort;
- (c) the full name and address of the owner;
- (d) an address at which the owner may be contacted promptly and effectively;
- (e) where the owner is not an individual resident in Jersey or a body incorporated in Jersey, the owner's agreement to submit to the jurisdiction of Jersey; and
- (f) a statement that the owner –
  - (i) believes, in good faith, that the information contained in the counter notice is correct and that the counter notice is not misleading, and
  - (ii) is aware of his or her liability under paragraph 15.

### **13 Actions by service provider following service of counter notice**

- (1) Where a counter notice is served on the service provider before the service provider removes or disables access to the material, the service provider –
  - (a) shall promptly serve a copy of the counter notice on the sender; and
  - (b) shall not be required to remove or disable access to the material.
- (2) Where a counter notice is served on the service provider after the service provider has removed or disabled access to the material, the service provider –
  - (a) shall promptly –
    - (i) serve a copy of the counter notice on the sender,
    - (ii) notify the sender that the material will be reinstated or access to it re-enabled after the expiry of the period of 10 working days following the day on which the counter notice is served, unless, within that period, the sender serves on the service provider notice of commencement of proceedings conforming to sub-paragraph (3); and
  - (b) if the service provider is not notified by the sender that proceedings have been so commenced, the service provider shall, within the period of 4 working days following the expiry of the period mentioned clause (a)(ii) –
    - (i) reinstate or re-enable access to the material, or
    - (ii) if the service provider is unable to reinstate or re-enable access to the material, inform the owner of the material who served the counter notice that the material may be provided for storage afresh.
- (3) A notice of commencement of proceedings is a notice signed by the sender and sent to the service provider at the address identified in accordance with paragraph 9(3) that the sender has commenced proceedings against the owner of the material for infringement by the material or activity associated with it of a right to which this Schedule applies, and containing –
  - (a) the date proceedings were commenced;
  - (b) the name of the court, tribunal or other authority before which the proceedings were commenced; and

- (c) the sender's statement that the sender –
  - (i) believes, in good faith, that the information contained in the notice is correct and that the notice is not misleading, and
  - (ii) is aware of his or her liability under paragraph 15.

#### **14 Notices that are not notices of alleged infringement**

- (1) This paragraph applies to a notice served –
  - (a) on a service provider described in paragraph 4(1)(a);
  - (b) by a person alleging that material stored in the service provider's information society service at the direction of a recipient of the service or activity associated with the material infringes a right to which this Schedule applies and which is actionable by the person.
- (2) Except as provided by sub-paragraphs (3) to (8), where the notice does not substantially comply with the requirements of paragraph 10, the notice shall not be taken into consideration in determining whether the service provider on whom it is served has actual knowledge that the material or activity to which the notice relates is unlawful.
- (3) Where the notice complies in every respect with paragraph 10 apart from the requirement in sub-paragraph (2) of that paragraph as to the service provider's address for service, the notice shall nevertheless have effect as a notice of alleged infringement save that –
  - (a) the service provider on whom it is served shall only be required by paragraph 11(1) to act in accordance with clauses (a) and (b) of that provision as soon as is practicable;
  - (b) the service provider on whom it is served shall only be required by paragraph 11(3) to remove or disable access to the material as soon as is practicable; and
  - (c) where paragraph 11(7) applies to the notice, the service provider on whom it is served shall only be required to act in accordance with clauses (b) and (c) of that provision as soon as is practicable.
- (4) Sub-paragraphs (5) to (8) apply where the notice substantially complies with the requirements of paragraph 10(3)(a) to (c) but does not substantially comply with all the other requirements of paragraph 10.
- (5) Subject to sub-paragraph (6), the service provider shall promptly contact the person who sent the notice and take such steps as may be reasonable to assist in the completion of a notice that substantially complies with paragraph 10.
- (6) A service provider is not required to comply with sub-paragraph (5) if the notice does not contain an address at which the person who sent the notice may be contacted promptly and effectively.
- (7) Subject to sub-paragraph (8), the notice shall be disregarded in determining whether the service provider has actual knowledge that the material or activity to which the notice relates is unlawful.
- (8) If the service provider does not comply with sub-paragraph (5) and sub-paragraph (6) does not apply, the notice may be taken into consideration in

determining whether the service provider has actual knowledge that the material or activity to which the notice relates is unlawful.

## **15 Liability for false or misleading notice, etc.**

- (1) A person who gives any notice under this Schedule or otherwise represents –
  - (a) that material or activity associated with it is unlawful; or
  - (b) that proceedings in respect of material or activity have been commenced for infringement of a right to which this Schedule applies,knowing that or being reckless as to whether the notice or representation is false or misleading in a material particular, shall be liable in damages for any loss suffered by the owner of the material or by the service provider, as a consequence of the owner or service provider, in reliance on the notice or representation, removing or disabling access to the material.
- (2) A person who gives any notice under this Schedule or otherwise represents that material or activity associated with it is not unlawful, knowing that or being reckless as to whether the notice or representation is false or misleading in a material particular, shall be liable in damages for any loss suffered by any person having a right of action in respect of the material or activity for infringement of a right to which this Schedule applies or by the service provider, as a consequence of the service provider, in reliance on the notice or representation –
  - (a) reinstating or re-enabling access to the material; or
  - (b) not removing or disabling access to the material.
- (3) The liability for misrepresentation imposed by this paragraph is actionable as a breach of statutory duty.

## **16 Injunctions against service providers**

- (1) The Court shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using the service provider's information society service to infringe a right to which this Schedule applies.
- (2) Sub-paragraph (1) applies irrespective of whether or not, by virtue of this Schedule, the service provider is liable for damages or any other pecuniary sanction in respect of the infringement.

## **17 Electronic communications**

- (1) Any notice that may be served under this Schedule may be served by means of an electronic communication.
- (2) A notice served by means of an electronic communication and that is required by this Schedule to be signed may be signed by electronic signature conforming to Article 12(1)(a) and (b) of the [Electronic Communications \(Jersey\) Law 2000](#).
- (3) A document that is supplemental to a notice served under this Schedule may be produced in electronic form if it conforms to Article 13(1)(a) and (b) of the [Electronic Communications \(Jersey\) Law 2000](#).

- (4) In this paragraph, “document”, “electronic”, “electronic communication” and “electronic signature” have the same meaning as in the [Electronic Communications \(Jersey\) Law 2000](#).

## **18 Agents**

- (1) Any notice that shall or may be served under this Schedule may be signed and served by the server’s agent.
- (2) Where a notice is signed and served by the server’s agent –
- (a) the agent shall indicate, in the notice, the capacity in which he or she is signing the notice; and
  - (b) any address for service on the server that the server is required to provide in the notice may be that of the agent.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Intellectual Property (Unregistered Rights) (Jersey) Law 2011	<a href="#">L.29/2011</a>	18 December 2012 ( <a href="#">R&amp;O.148/2012</a> )
European Union Legislation (Implementation) (Jersey) Law 2014	<a href="#">L.28/2014</a>	31 October 2014
States of Jersey (Transfer of Functions No. 8) (Miscellaneous Transfers) (Jersey) Regulations 2015	<a href="#">R&amp;O.158/2015</a>	1 January 2016
Criminal Justice (Miscellaneous Provisions) (Jersey) Law 2016	<a href="#">L.1/2016</a>	20 September 2016 ( <a href="#">R&amp;O.98/2016</a> )
States of Jersey (Transfer of Responsibilities and Functions) (Competition, Unregistered Rights and Trade Marks) (Jersey) Order 2020	<a href="#">R&amp;O.93/2020</a>	11 July 2020
Intellectual Property (Unregistered Rights) (Marrakesh Treaty) (Jersey) Regulations 2020	<a href="#">R&amp;O.141/2020</a>	25 November 2020

### Table of Renumbered Provisions

Original	Current
407(a)	spent, omitted
407(b)	407
410	spent, omitted
411(1)	410
411(2)	spent, omitted
Schedule 1	Schedule
Schedule 2	spent, omitted

### Table of Endnote References

<sup>1</sup> Article 1(1)	<i>amended by L.28/2014, R&amp;O.158/2015, R&amp;O.93/2020</i>
<sup>2</sup> Article 42(5)	<i>amended by L.28/2014</i>
<sup>3</sup> Article 49(1)	<i>substituted by R&amp;O.141/2020</i>
<sup>4</sup> Article 49(3)	<i>deleted by R&amp;O.141/2020</i>
<sup>5</sup> Article 49(7)	<i>amended by R&amp;O.141/2020</i>
<sup>6</sup> Article 50(1)	<i>substituted by R&amp;O.141/2020</i>
<sup>7</sup> Article 50(3)	<i>deleted by R&amp;O.141/2020</i>
<sup>8</sup> Article 50(4)	<i>deleted by R&amp;O.141/2020</i>
<sup>9</sup> Article 50(12)	<i>inserted by R&amp;O.141/2020</i>
<sup>10</sup> Article 51(3)	<i>amended by R&amp;O.141/2020</i>
<sup>11</sup> Article 54(3)	<i>amended by R&amp;O.141/2020</i>
<sup>12</sup> Article 54(6)	<i>amended by R&amp;O.141/2020</i>

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- <sup>13</sup> Article 139(6) *amended by L.1/2016*
- <sup>14</sup> Article 250(1) *amended by L.1/2016*
- <sup>15</sup> Article 318(8) *amended by L.1/2016*
- <sup>16</sup> Article 320(2) *amended by L.1/2016*
- <sup>17</sup> Article 324(2) *editorial change, “it” deleted, “its” inserted instead*
- <sup>18</sup> Article 344(5) *amended by L.28/2014*
- <sup>19</sup> Article 401 *heading amended by L.28/2014*
- <sup>20</sup> Article 401(1) *amended by L.28/2014*
- <sup>21</sup> Article 401(2) *amended by L.28/2014*
- <sup>22</sup> Article 409(2) *amended by L.1/2016*