

COPYRIGHT ACT

PART I

PRELIMINARY

Short title

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

[Aust. 1968, s. 1]

Application

2. Except insofar as Parts XI and XII otherwise expressly provide, this Act shall apply in relation to things existing on 10th April 1987 in like manner as it applies in relation to things coming into existence after that date.

[38/99]

Application to Government

3. Subject to Part X, this Act shall bind the Government but nothing in this Act shall render the Government liable to be prosecuted for an offence.

[Aust. 1968, s. 7]

Copyright not to subsist except by virtue of this Act

4. Subject to the provisions of this Act, no copyright shall subsist otherwise than by virtue of this Act.

[Aust. 1968, s. 8]

Savings of rights of Government, etc.

5. Nothing in this Act shall affect any right or privilege of the Government or any other person under any other written law, except insofar as that law is expressly repealed, amended or modified by this Act.

[Aust. 1968, s. 7]

Operation of other laws

6. Nothing in this Act shall affect the operation of the law relating to breaches of trust or confidence.

[Aust. 1968, s. 9 (3)]

PART II

INTERPRETATION

Interpretation

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

"accessory" , in relation to an article, means one or more of the following:

- (a) a label affixed to, or displayed on, the article;
- (b) the packaging or container in which the article is packaged or contained;
- (c) a label affixed to, or displayed on, the packaging or container in which the article is packaged or contained;
- (d) a leaflet, pamphlet, certificate, warranty, brochure, written instruction or other information incidental to the article and provided with the article on its sale;
- (e) an instructional sound recording or cinematograph film incidental to the article and provided with the article on its sale,

but does not include —

- (i) a copy of a work that is incorporated into the surface of the article and is a permanent part of the article;
- (ii) a copy of a work that cannot be separated from the article without rendering the article unsuitable for its ordinary use; or
- (iii) a manual sold with computer software for use in connection with that software;

"adaptation" —

- (a) in relation to a literary work in a non-dramatic form, means a version of the work (whether in its original language or in a different language) in a dramatic form;
- (b) in relation to a literary work in a dramatic form, means a version of the work (whether in its original language or in a different language) in a non-dramatic form;
- (c) in relation to a literary work being a computer program, means a version of the work (whether or not in the language, code or notation in which the work was originally expressed) not being a reproduction of the work;
- (d) in relation to a literary work (whether in a non-dramatic form or dramatic form), means —
 - (i) a translation of the work; or

(ii) a version of the work in which a story or action is conveyed solely or principally by means of pictures; and

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

"archives" means —

(a) archival material in the custody of the National Archives of Singapore established under section 17 of the National Heritage Board Act (Cap. 196A);

(b) a collection of documents or other material to which this paragraph applies by virtue of subsection (4);

"artistic work" means —

(a) a painting, sculpture, drawing, engraving or photograph, whether the work is of artistic quality or not;

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

(c) a work of artistic craftsmanship to which neither paragraph (a) nor (b) applies, but does not include a layout-design or an integrated circuit within the meaning of section 2 (1) of the Layout-Designs of Integrated Circuits Act (Cap. 159A);

"author" , in relation to a photograph, means the person who took the photograph;

"broadcast" means broadcast by wireless telegraphy, and "broadcasting" shall have a corresponding meaning;

"broadcasting licence" and "broadcasting licensee" have the same meanings as in section 2 (1) of the Broadcasting Act (Cap. 28);

"building" includes a structure of any kind;

"cable programme" means a programme which is included in a cable programme service;

"cable programme service" means a service which consists wholly or mainly in the sending by any person, by means of a telecommunication system (whether run by him or by any other person), of sounds or visual images or both either —

(a) for reception, otherwise than by wireless telegraphy, at 2 or more places in Singapore, whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service; or

(b) for reception, by whatever means, at a place in Singapore for the purpose of their being presented there either to members of the public or to any group of persons;

"cinematograph film" means the aggregate of visual images embodied in an article or thing so as to be capable by the use of that article or thing —

(a) of being shown as a moving picture; or

(b) of being embodied in another article or thing by the use of which it can be so shown,

and includes the aggregate of the sounds embodied in a sound-track associated with such visual images;

"citizen of Singapore" includes a person who, if he had been alive on 1st November 1957, would have qualified for Singapore citizenship under the Singapore Citizenship Ordinance 1957 (Ord. 35/57);

"communicate" means to transmit by electronic means (whether over a path, or a combination of paths, provided by a material substance or by wireless means or otherwise) a work or other subject-matter, whether or not it is sent in response to a request, and includes —

(a) the broadcasting of a work or other subject-matter;

(b) the inclusion of a work or other subject-matter in a cable programme; and

(c) the making available of a work or other subject-matter (on a network or otherwise) in such a way that the work or subject-matter may be accessed by any person from a place and at a time chosen by him,

and "communication" shall have a corresponding meaning;

"computer program" means an expression, in any language, code or notation, of a set of instructions (whether with or without related information) intended, either directly or after either or both of the following:

(a) conversion to another language, code or notation;

(b) reproduction in a different material form,

to cause a device having information processing capabilities to perform a particular function;

"construction" includes erection and "reconstruction" shall have a corresponding meaning;

"conveyance" has the same meaning as in the Regulation of Imports and Exports Act (Cap. 272A);

"copy" , in relation to a cinematograph film, means any article or thing in which the visual images or sounds comprising the film are embodied;

"Copyright Act 1911" means the Copyright Act 1911 of the United Kingdom (U.K. 1911 c. 46) insofar as it has effect as part of the law of Singapore;

"Copyright Tribunal" or "Tribunal" means any Copyright Tribunal established under Part VII;

"digital audio transmission" means a transmission of a sound recording, in whole or in part, in a digital or other non-analogue form;

"dramatic work" includes —

(a) a choreographic show or other dumb show if described in writing in the form in which the show is to be presented; and

(b) a scenario or script for a cinematograph film,
but does not include a cinematograph film as distinct from the scenario or script for a cinematograph film;

"drawing" includes any diagram, map, chart or plan;

"educational institution" means —

(a) a school or similar institution at which one or more of the following is provided:

(i) full-time primary education;

(ii) full-time secondary education;

(iii) full-time pre-university education;

(iv) such other full-time education as may be prescribed by regulations made under this Act;

(b) a junior college, a university, a college of advanced education or a technical and further education institution;

(c) an institution that conducts courses of primary, secondary, pre-university or tertiary education by correspondence or on an external study basis;

(d) a school of nursing;

(e) an undertaking within a hospital, being an undertaking that conducts courses of study or training in —

- (i) the provision of medical services; or
- (ii) the provision of services incidental to the provision of medical services;
- (f) a teacher education centre;
- (g) an institution that has, as its principal function, the provision of courses of study or training for the purpose of —
 - (i) general education;
 - (ii) the preparation of persons for a particular occupation or profession; or
 - (iii) the continuing education of persons engaged in a particular occupation or profession;
- (h) such other institution at which education is provided as may be declared by regulations made under this Act to be an institution to which this paragraph applies;
- (i) an undertaking within a body administering an educational institution of a kind referred to in paragraphs (a) to (h), being an undertaking that has as its principal function, or as one of its principal functions, the provision of teacher training for persons engaged as instructors in educational institutions of such a kind, or of 2 or more such kinds;
- (j) an institution, or an undertaking within a body administering an educational institution of a kind referred to in paragraphs (a) to (i), being an institution or undertaking that has as its principal function, or as one of its principal functions, the furnishing of materials to educational institutions of a kind referred to in paragraphs (a) to (i), or to educational institutions of 2 or more such kinds, for the purpose of assisting those institutions in their teaching purposes, but does not include an institution that is conducted for the profit, direct or indirect, of an individual or individuals;

"electronic copy" , in relation to any work or other subject-matter, means a copy of the work or subject-matter in an electronic form;

"engraving" includes an etching, lithograph, product of photogravure, woodcut, print or similar work, not being a photograph;

"exclusive licence" means a licence in writing, signed by or on behalf of the owner or prospective owner of copyright, authorising the licensee, to the exclusion of all other persons, to do an act that, by virtue of this Act, the owner

of the copyright would, but for the licence, have the exclusive right to do, and "exclusive licensee" shall have a corresponding meaning;

"future copyright" means copyright to come into existence at a future time or upon the happening of a future event;

"handicapped reader" means —

(a) a blind person;

(b) a person suffering severe impairment of his sight;

(c) a person unable to hold or manipulate books or to focus or move his eyes; or

(d) a person suffering from a perceptual handicap;

"infringing copy" —

(a) in relation to a work, means a reproduction of the work, or of an adaptation of the work, not being a copy of a cinematograph film of the work or adaptation;

(b) in relation to a sound recording, means a copy of the sound recording not being a sound-track associated with visual images forming part of a cinematograph film;

(c) in relation to a cinematograph film, means a copy of the film;

(d) in relation to a television broadcast, sound broadcast or cable programme, means a copy of a cinematograph film of the broadcast or programme or a record embodying a sound recording of the broadcast or programme; and

(e) in relation to a published edition of a work, means a reproduction of the edition,

being an article the making of which constituted an infringement of the copyright in the work, recording, film, broadcast, programme or edition or, in the case of an article imported without the licence of the owner of the copyright, the making of which was carried out without the consent of the owner of the copyright;

"institution" includes an educational institution;

"institution assisting handicapped readers" means —

(a) an educational institution; or

(b) any other institution, not being an institution conducted for profit, direct or indirect, of an individual or individuals,

that has as its principal function, or one of its principal functions, the provision of literary or dramatic works to handicapped readers and that is declared by

regulations made under this Act to be, for the purposes of this Act, an institution assisting handicapped readers;

"institution assisting intellectually handicapped readers" means —

(a) any educational institution; or

(b) any non-profit organisation,

that has as its principal function, or one of its principal functions, the provision of assistance to intellectually handicapped persons and that is declared by

regulations made under this Act to be, for the purposes of this Act, an institution assisting intellectually handicapped readers;

"international organisation to which this Act applies" means an organisation that is declared by the regulations made for the purposes of section 185 to be an international organisation to which this Act applies, and includes —

(a) an organ of, or office within, an organisation that is so declared; and

(b) a commission, council or other body established by such an organisation or organ;

"judicial proceeding" means a proceeding before any court, tribunal or person having by law power to hear, receive and examine evidence on oath;

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

"minimum royalty" , in relation to a record, means the amounts applicable in respect of the record under sections 57 (3) and 58 (*b*) (i) or, if those provisions are affected by regulations made for the purposes of section 59, under those provisions as so affected;

"non-profit organisation" means an organisation or association or persons, whether corporate or unincorporate, that is not operated or conducted for profit;

"Office" means the Intellectual Property Office of Singapore incorporated under the Intellectual Property Office of Singapore Act (Cap. 140);

"photograph" means a product of photography or of a process similar to photography, other than an article or thing in which visual images forming part of a cinematograph film have been embodied, and includes a product of xerography, and "photography" shall have a corresponding meaning;

"plate" includes a stereotype, stone, block, mould, matrix, transfer, negative or other similar appliance;

"programme" , in relation to a cable programme service, includes any item included in that service;

"prospective owner" —

(a) in relation to a future copyright that is not the subject of an agreement of a kind referred to in section 195 (1), means the person who will be the owner of the copyright on its coming into existence; or

(b) in relation to a future copyright that is the subject of such an agreement, means the person in whom, by virtue of that section, the copyright will vest on its coming into existence;

"receiving apparatus" means any device or equipment the operation of which, either alone or together with any other device or equipment, enables people to hear or see a work or other subject-matter that is communicated;

"record" means a disc, tape, paper or other device in which sounds are embodied;

"regulations" means the regulations made under this Act;

"re-transmission" , in relation to a broadcast, means a re-transmission of the broadcast without altering the contents of the broadcast, whether the re-transmission is simultaneous with the original transmission or whether the technique that is used to achieve the re-transmission is different from that used to achieve the original transmission;

"royalty" , in relation to a record, means the amount applicable in respect of the record under section 57 (1) or, if that provision is affected by regulations made for the purposes of section 59, under that provision so affected;

"sculpture" includes a cast or model made for purposes of sculpture;

"simulcasting" , in relation to a work, an adaptation of a work, a sound recording or a cinematograph film, means simultaneously broadcasting the work, adaptation, recording or film in both analogue form and digital form;

"sound broadcast" means sounds broadcast otherwise than as part of a television broadcast;

"sound recording" means the aggregate of the sounds embodied in a record;

"sound-track" , in relation to visual images forming part of a cinematograph film, means —

- (a) the part of any article or thing (being an article or thing in which those visual images are embodied) in which sounds are embodied; or
- (b) a disc, tape or other device in which sounds are embodied and which is made available by the maker of the film for use in conjunction with the article or thing in which those visual images are embodied;

"sufficient acknowledgment" , in relation to a work, means an acknowledgment identifying the work by its title or other description and, unless the work is anonymous or pseudonymous or the author has previously agreed or directed that an acknowledgment of his name is not to be made, also identifying the author;

"telecommunication apparatus" means apparatus constructed or adapted for use in transmitting or receiving —

- (a) speech, music and other sounds;
- (b) visual images;
- (c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- (d) signals serving for the actuation or control of machinery or apparatus, which is to be or has been conveyed by means of a telecommunication system;

"telecommunication system" means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of —

- (a) speech, music and other sounds;
- (b) visual images;
- (c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- (d) signals serving for the actuation or control of machinery or apparatus;

"television broadcast" means visual images broadcast by way of television, together with any sounds broadcast for reception along with those images;

"wireless telegraphy" means the emitting or receiving, otherwise than over a path that is provided by a material substance, of electro-magnetic energy;

"wireless telegraphy apparatus" means an appliance or apparatus for the purpose of transmitting or receiving sounds or visual images by means of wireless telegraphy;

"will" includes a codicil;

"work" means a literary, dramatic, musical or artistic work;

"work of joint authorship" means a work that has been produced by the collaboration of 2 or more authors and in which the contribution of each author is not separate from the contribution of the other author or the contributions of other authors;

"writing" means a mode of representing or reproducing words, figures or symbols in a visible form, and "written" shall have a corresponding meaning.

[14/94; 15/94;6/98;3/99;38/99; 3/2001; 34/2002;52/2004]

(1A) Without limiting the meaning of the expression "educational purposes" in this Act, a copy of the whole or a part of a work or other subject-matter shall be taken to have been made, used or retained, as the case may be, for the educational purposes of an educational institution if —

(a) it is made or retained for use, or is used, in connection with a particular course of instruction provided by the institution; or

(b) it is made or retained for inclusion, or is included, in the collection of a library of the institution.

[6/98]

(2) Without limiting the meaning of the expression "reasonable portion" in this Act, where a literary, dramatic or musical work is contained in a published edition of that work, being an edition of not less than 10 pages, a copy of part of that work, as it appears in that edition, shall be taken to contain only a reasonable portion of that work if the pages that are copied in the edition —

(a) do not exceed, in the aggregate, 10% of the number of pages in that edition; or

(b) in a case where the work is divided into chapters — exceed, in the aggregate, 10% of the number of pages in that edition but contain only the whole or part of a single chapter of the work.

(2A) Without limiting the meaning of the expression “reasonable portion” in this Act, where a literary, dramatic or musical work is contained in a published edition of that work, being an edition which is stored on any medium by electronic means and is not divided into pages, a copy of part of that work, as it appears in that edition, shall be taken to contain only a reasonable portion of that work if the part that is copied in the edition —

(a) does not exceed, in the aggregate —

(i) 10% of the total number of bytes in that edition; or

(ii) 10% of the total number of words in that edition or, where it is not practicable to use the total number of words as a measure, 10% of the contents of that edition; or

(b) in a case where the work is divided into chapters, exceeds, in the aggregate —

(i) 10% of the total number of bytes in that edition; or

(ii) 10% of the total number of words in that edition or, where it is not practicable to use the total number of words as a measure, 10% of the contents of that edition,

but contains only the whole or part of a single chapter of the work.

[38/99;52/2004]

(3) In this Act, unless the contrary intention appears —

(a) a reference to the body administering an educational institution, an institution assisting handicapped readers or an institution assisting intellectually handicapped readers shall be read as —

(i) in a case where the institution is a body corporate, a reference to the institution; or

(ii) in any other case, a reference to the body or person (including the Government) having ultimate responsibility for the administration of the institution;

(b) a reference to the body administering a library or archives shall be read as a reference to the body (whether incorporated or not), or the person (including the Government), having ultimate responsibility for the administration of the library or archives;

(c) a reference to a copy of a sound recording shall be read as a reference to a record embodying a sound recording or a substantial part of a sound recording being a record derived, directly or indirectly, from a record produced upon the making of a sound recording;

(d) a reference to the copying records of an educational institution, an institution assisting handicapped readers or an institution assisting intellectually handicapped readers shall be read as a reference to the collection of —

(i) the relevant records in respect of copies of articles and other works made by or on behalf of the body administering the institution in reliance on section 52;

(ii) the relevant records in respect of copies of articles and other works made by or on behalf of the body administering the institution in reliance on section 54;

(iii) the relevant records in respect of copies of articles and other works made by or on behalf of the body administering the institution in reliance on section 54A, other than any such records as have been duly destroyed by, or by authority of, the body administering that institution;

(e) a reference to the custodian in charge of the copying records of an educational institution, an institution assisting handicapped readers or an institution assisting intellectually handicapped readers shall be read as a reference to the person having responsibility for the day-to-day administration of the institution;

(f) a reference to the making, by reprographic reproduction, of a copy of a document, or of the whole or a part of a work, shall be read as a reference to the making of a facsimile copy of the document or the whole or that part of the work, being a facsimile copy of any size or form;

(g) a reference to a handicapped reader's copy of a work, or of a part of a work, shall be read as a reference to —

(i) a record embodying a sound recording of the work, or of the part of the work, being a record that was made by, or on behalf of, the body administering an

institution assisting handicapped readers for use by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake or for the purpose of instructing himself on any matter; or

(ii) a Braille version, large-print version or photographic version of the work, or of the part of the work, being a Braille version, large-print version or photographic version, as the case may be, made by, or on behalf of, the body administering the institution assisting handicapped readers for use by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake or for the purpose of instructing himself on any matter;

(h) a reference to an intellectually handicapped reader's copy of a work, or of a part of a work, shall be read as a reference to a copy of a work, or of a part of a work, as the case may be, made by, or on behalf of, the body administering an institution assisting intellectually handicapped persons, being a copy that is made for the sole purpose of use in the provision, whether by the institution or otherwise, of assistance to any intellectually handicapped person;

(i) a reference to a microform copy of the whole or a part of a work shall be read as a reference to a copy of the whole or part of the work produced by miniaturizing the graphic symbols of which the work is composed;

(j) a reference to a periodical publication shall be read as a reference to an issue of a periodical publication and a reference to articles contained in the same periodical publication shall be read as a reference to articles contained in the same issue of that periodical publication;

(k) a reference to a record embodying a sound recording shall be read as a reference to —

(i) a record produced upon the making of a sound recording; or

(ii) another record embodying the sound recording, directly or indirectly, derived from a record so produced;

(l) a reference to a relevant record, or a relevant declaration, in relation to the making, in reliance on a particular section —

(i) of a copy, a handicapped reader's copy, or an intellectually handicapped reader's copy, of the whole or a part of a work; or

(ii) of a copy of a sound recording,

shall be read as a reference to any record or declaration of a kind referred to in that section that is required by this Act to be made in relation to the making of that copy.

[6/98;38/99]

(4) Where —

(a) a collection of documents or other material of historical significance or public interest that is in the custody of a body, whether corporate or unincorporate, is being maintained by the body for the purpose of conserving and preserving those documents or other material; and

(b) the body does not maintain and operate the collection for the purpose of deriving a profit,

paragraph (b) of the definition of “archives” in subsection (1) shall apply to that collection.

(5) For the purposes of this Act, telecommunication apparatus which is situated in Singapore and —

(a) is connected to but not comprised in a telecommunication system; or

(b) is connected to and comprised in a telecommunication system which extends beyond Singapore,

shall be regarded as a telecommunication system and any person who controls the apparatus shall be regarded as running the system.

[Aust. 1968, s. 10]

Literary works include compilation and computer program

7A. —(1) For the purposes of this Act, “literary work” includes —

(a) a compilation in any form; and

(b) a computer program.

[38/99]

(2) Any copyright subsisting in a compilation by virtue of Part III —

(a) is limited to the selection or arrangement of its contents which constitutes an intellectual creation; and

(b) is in addition to, and independent of, any right subsisting by virtue of Part III, IV or XII in any relevant material or data contained in the compilation.

[38/99]

(3) For the purposes of this section —

"compilation" means —

(a) a compilation, or table, consisting wholly of relevant materials or parts of relevant materials;

(b) a compilation, or table, consisting partly of relevant materials or parts of relevant materials; or

(c) a compilation, or table, of data other than relevant materials or parts of relevant materials,

which, by reason of the selection or arrangement of its contents, constitutes an intellectual creation;

"relevant material" means —

(a) a work, including a computer program;

(b) a sound recording;

(c) a cinematograph film;

(d) a published edition of a work;

(e) a television or sound broadcast;

(f) a cable programme; or

(g) a recording of a performance within the meaning of Part XII.

[38/99]

Residence

8. —(1) For the purposes of this Act, a "person resident in Singapore" includes a person who, at the material time, is residing in Singapore by virtue of a valid pass lawfully issued to him under the Immigration Act (Cap. 133) to enter and remain in Singapore for any purpose otherwise than for a temporary purpose.

(2) For the purposes of this Act, a person who, at a material time, was ordinarily resident in a country (including Singapore) but was temporarily absent from that country shall be treated as if he had been resident in that country at that time.

[Aust. 1968, s. 11]

Acts comprised in copyright

9. —(1) A reference in this Act to an act comprised in the copyright in a work or other subject-matter shall be read as a reference to any act that, under this Act, the owner of the copyright has the exclusive right to do.

(2) For the purposes of this Act, the exclusive right to do an act in relation to a work, an adaptation of a work or any other subject-matter includes the exclusive right to authorise a person to do that act in relation to that work, adaptation or other subject-matter.

[Aust. 1968, s. 13]

Acts done in relation to substantial part of work or other subject-matter deemed to be done in relation to the whole

10. —(1) In this Act, unless the contrary intention appears —

(a) a reference to the doing of an act in relation to a work or other subject-matter shall be read as including a reference to the doing of that act in relation to a substantial part of the work or other subject-matter; and

(b) a reference to a reproduction, adaptation or copy of a work shall be read as including a reference to a reproduction, adaptation or copy of a substantial part of the work, as the case may be.

(2) This section shall not affect the interpretation of any reference in sections 27, 185, 196 and 197 to the publication, or absence of publication, of a work.

[Aust. 1968, s. 14]

References to acts done with licence of owner of copyright

11. For the purposes of this Act, an act shall be deemed to have been done with the licence of the owner of a copyright if the doing of the act was authorised by a licence binding the owner of the copyright.

[Aust. 1968, s. 15]

References to partial assignment of copyright

12. A reference in this Act to a partial assignment of copyright shall be read as a reference to an assignment of copyright that is limited in any way.

[Aust. 1968, s. 16]

Libraries established or conducted for profit

13. For the purposes of this Act, a library shall not be taken to be established or conducted for profit by reason only that the library is owned by a person carrying on business for profit.

[Aust. 1968, s. 18]

Names under which work is published

14. —(1) A reference in this Act to the name or names under which a work was published shall be read as a reference to the name or names specified in the work as the name of the author or the names of the authors of the work.

(2) For the purposes of this Act, a publication of a work under 2 or more names shall not be taken to be pseudonymous unless all those names are pseudonyms.

[Aust. 1968, s. 20]

Reproduction of works

15. —(1) For the purposes of this Act, reproduction, in the case of a literary, dramatic or musical work, includes a reproduction in the form of a sound recording or cinematograph film of the work, and any record embodying such a recording and any copy of such a film shall be deemed to be a reproduction of the work.

(1A) For the purposes of this Act, reproduction, in relation to any work, includes the making of a copy which is transient or is incidental to some other use of the work.

[38/99]

(1B) Without limiting the meaning of the term "reproduced", for the purposes of this Act, a literary, dramatic, musical or artistic work, including a reproduction of such work in the form of a sound recording or cinematograph film, is reproduced if it is converted into or from a digital or other electronic machine-readable form, and any article embodying the work or reproduction of the work in such a form is taken to be a reproduction of the work.

[52/2004]

(2) Subsections (1), (1A) and (1B) shall apply in relation to an adaptation of a work in like manner as it applies in relation to a work.

[38/99;52/2004]

(3) For the purposes of this Act, an artistic work shall be deemed to have been reproduced —

(a) in the case of a work in a 2-dimensional form — if a version of the work is produced in a 3-dimensional form; or

(b) in the case of a work in a 3-dimensional form — if a version of the work is produced in a 2-dimensional form,
and the version of the work so produced shall be deemed to be a reproduction of the work.

(4) Subsection (3) shall have effect subject to Division 9 of Part III.

[Aust. 1968, s. 21]

Provisions relating to the making of a work or other subject-matter

16. —(1) A reference in this Act to the time when, or the period during which, a literary, dramatic or musical work was made shall be read as a reference to the time when, or the period during which, as the case may be, the work was first reduced to writing or to some other material form.

(2) For the purposes of this Act, a literary, dramatic or musical work that exists in the form of sounds embodied in an article or thing shall be deemed to have been reduced to a material form and to have been so reduced at the time when those sounds were embodied in that article or thing.

(3) For the purposes of this Act —

(a) a sound recording shall be deemed to have been made at the time when the first record embodying the recording was produced; and

(b) the maker of the sound recording is the person who owned that record at that time.

(4) For the purposes of this Act —

(a) a reference to the making of a cinematograph film shall be read as a reference to the doing of the things necessary for the production of the first copy of the film; and

(b) the maker of the cinematograph film is the person by whom the arrangements necessary for the making of the film were undertaken.

(5) For the purposes of this Act, a television broadcast or sound broadcast shall be deemed to have been made by the person by whom, at the time when, and from the place from which —

(a) the visual images or sounds in question, or both, as the case may be, are broadcast; or

(b) in the case of a television broadcast or sound broadcast made by the technique known as direct broadcasting by satellite, the visual images or sounds in question, or both, as the case may be, are transmitted to the satellite transponder.

(6) For the purposes of this Act, a communication other than a broadcast is taken to have been made by the person responsible for determining the content of the communication at the time the communication is made.

[52/2004]

[Aust. 1968, s. 22]

Storage in computer or on any other medium

17. References in this Act to the reduction of any work or of an adaptation of a work to a material form, or to the reproduction of any work or of an adaptation of a work in a material form, shall include references to the storage of that work or adaptation —

(a) in a computer;

(b) on any medium by electronic means; or

(c) on any other medium from which the work or adaptation, or a substantial part of the work or adaptation, can be directly reproduced.

[38/99;52/2004]

Sound recordings and records

18. —(1) For the purposes of this Act, sounds embodied in a sound-track associated with visual images forming part of a cinematograph film shall be deemed not to be a sound recording.

(2) A reference in this Act to a record of a work or other subject-matter shall, unless the contrary intention appears, be read as a reference to a record by means of which the work or other subject-matter can be performed.

[Aust. 1968, s. 23]

References to sounds and visual images embodied in an article

19. For the purposes of this Act, sounds or visual images shall be taken to have been embodied in an article or thing if the article or thing has been so treated in relation to those sounds or visual images that those sounds or visual images are

capable, with or without the aid of some other device, of being reproduced from the article or thing.

[Aust. 1968, s. 24]

Provisions relating to broadcasting

20. —(1) A reference in this Act to broadcasting shall, unless the contrary intention appears, be read as a reference to broadcasting whether by way of sound broadcasting or of television.

(2) A reference in this Act to the doing of an act by the reception of a television broadcast or sound broadcast shall be read as a reference to the doing of that act by means of receiving a broadcast from —

(a) the transmission by which the broadcast is made; or

(b) a transmission made otherwise than by way of broadcasting, but simultaneously with the transmission referred to in paragraph (a), whether the reception of the broadcast is directly from the transmission concerned or from re-transmission made by any person from any place.

(3) Where a record embodying a sound recording or a copy of a cinematograph film is used for the purpose of making a broadcast (referred to in this subsection as the primary broadcast), a person who makes a broadcast (referred to in this subsection as the secondary broadcast) by receiving and simultaneously making a further transmission of —

(a) the transmission by which the primary broadcast was made; or

(b) a transmission made otherwise than by way of broadcasting but simultaneously with the transmission referred to in paragraph (a), shall, for the purposes of this Act, be deemed not to have used the record or copy for the purpose of making the secondary broadcast.

(4) In this Act —

(a) a reference to a cinematograph film of a television broadcast shall be read as including a reference to a cinematograph film, or a photograph, of any of the visual images comprised in the broadcast; and

(b) a reference to a copy of a cinematograph film of a television broadcast shall be read as including a reference to a copy of a cinematograph film, or a reproduction of a photograph, of any of those images.

(5) In this section, "re-transmission" means any re-transmission, whether over paths provided by a material substance or not, and includes a re-transmission made by making use of any article or thing in which the visual images or sounds constituting the broadcast, or both, as the case may be, have been embodied.

[Aust. 1968, s. 25]

Cable programmes

21. —(1) A reference in this Act to the inclusion of a programme in a cable programme service is a reference to its inclusion in such a service by the person providing that service.

(2) For the purposes of this Act, no account shall be taken of a cable programme service if, and to the extent that, it is provided for a person providing another such service.

[15/94]

(3) Where a service of distributing matter over wires or over other paths provided by a material substance is only incidental to, or part of, a service of transmitting telegraphic or telephonic communications, a subscriber to the last-mentioned service shall be taken, for the purposes of this section, to be a subscriber to the first-mentioned service.

Performance

22. —(1) Subject to this section, unless the context otherwise requires, a reference in this Act to "performance" shall —

(a) be read as including a reference to any mode of visual or aural presentation, whether the presentation is by the use of any receiving apparatus, by the exhibition of a cinematograph film, by the use of a record or by any other means; and

(b) in relation to a lecture, an address, a speech or a sermon, be read as including a reference to delivery,

and a reference in this Act to performing a work or an adaptation of a work shall have a corresponding meaning.

[52/2004]

(2) For the purpose of this Act, the communication of a work or other subject-matter to the public shall not —

- (a) constitute a performance; or
- (b) amount to causing visual images to be seen or sounds to be heard.

[52/2004]

(3) For the purposes of this Act, where visual images are displayed or sounds are emitted by any receiving apparatus to which they are communicated, the operation of any device or equipment by which the images or sounds are communicated, directly or indirectly, to the receiving apparatus does not constitute a performance or amount to causing images to be seen or sounds to be heard but, insofar as the display of the images or emission of the sounds constitutes a performance, or causes the images to be seen or the sounds to be heard, the performance, or the causing of the images to be seen or sounds to be heard, as the case may be, shall be deemed to be effected by the operation of the receiving apparatus.

[52/2004]

(4) Without prejudice to subsections (2) and (3), where a work or an adaptation of a work is performed or visual images are caused to be seen or sounds to be heard by the operation of any device or equipment referred to in subsection (3) or of any device or equipment for reproducing sounds by the use of a record, being device or equipment provided by or with the consent of the occupier of the premises where the device or equipment is situated, the occupier of those premises shall, for the purposes of this Act, be deemed to be the person giving the performance or causing the images to be seen or the sounds to be heard, whether he is the person operating the device or equipment or not.

[52/2004]

[Aust. 1968, s. 27]

Performance of works or other subject-matter by students or staff of educational institution, etc.

23. —(1) Where a musical work is performed by the students or staff of an educational institution in the premises of the institution or elsewhere in the presence of an audience and is so performed in the course of the activities of the institution, the performance shall, for the purposes of this Act, be deemed not to be a performance in public.

[52/2004]

(2) Where a literary or dramatic work is performed by the students or staff of an educational institution in the premises of the institution or elsewhere in the presence of an audience and is so performed in the course of the activities of the institution, the performance shall, for the purposes of this Act, be deemed not to be a performance in public if the audience is limited to persons who are taking part in the instruction or are otherwise directly connected with the place where the instruction is given.

[52/2004]

(3) For the purposes of subsection (2), a person shall be deemed to be directly connected with a place where instruction is given if he is a parent, guardian, brother or sister of a student who receives instruction at that place.

(4) Subsections (2) and (3) shall apply in relation to cinematograph films, broadcasts, cable programmes and recordings of performances in like manner as they apply in relation to literary and dramatic works but, in the application of those subsections in relation to such films, broadcasts, cable programmes or recordings, any reference to the performance of the work shall be read as a reference to the act of causing the sounds concerned to be heard or the visual images concerned to be seen.

[52/2004]

(5) For the purposes of this section, the staff of an educational institution shall include —

- (a) any adjunct staff of the educational institution; and
- (b) any person engaged by the educational institution to conduct any course of instruction, activity or programme of or offered by the educational institution.

[52/2004]

[Aust. 1968, s. 28]

Publication

24. —(1) Subject to this section, for the purposes of this Act —

- (a) a literary, dramatic, musical or artistic work, or an edition of such a work, shall be deemed to have been published if, but only if, reproductions of the work or

an edition of that work have been supplied (whether by sale or otherwise) to the public;

(b) a cinematograph film shall be deemed to have been published if, but only if, copies of the film have been sold, let on hire, or offered or exposed for sale or hire, to the public; and

(c) a sound recording shall be deemed to have been published if, but only if, records embodying the recording or a part of the recording have been supplied (whether by sale or otherwise) to the public.

(2) In determining, for the purposes of subsection (1) (a), whether reproductions of a work or an edition of that work have been supplied to the public, section 10 shall not apply.

(3) For the purposes of this Act —

(a) the performance of a literary, dramatic or musical work;

(b) the supplying (whether by sale or otherwise) to the public of records of a literary, dramatic or musical work;

(c) the exhibition of an artistic work;

(d) the construction of a building or of a model of a building; or

(e) the supplying (whether by sale or otherwise) to the public of photographs or engravings of a building, of a model of a building or of a sculpture, shall not constitute publication of the work.

(4) A publication that is merely colourable and is not intended to satisfy the reasonable requirements of the public shall be disregarded for the purposes of this Act except insofar as it may constitute an infringement of copyright or a breach of a duty under Part IX.

(5) For the purposes of this Act, a publication in Singapore or in any other country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the 2 publications took place within a period of not more than 30 days.

(6) In determining, for the purposes of any provision of this Act whether —

(a) a work or other subject-matter has been published;

(b) a publication of a work or other subject-matter was the first publication of the work or other subject-matter; or

(c) a work or other subject-matter was published or otherwise dealt with in the life-time of a person,
any unauthorised publication or the doing of any other unauthorised act shall be disregarded.

(7) Subject to section 49, a publication or other act shall, for the purposes of subsection (6), be taken to have been unauthorised if, but only if —

(a) copyright subsisted in the work or other subject-matter and the act concerned was done otherwise than by, or with the licence of, the owner of the copyright; or

(b) copyright did not subsist in the work or other subject-matter and the act concerned was done otherwise than by, or with the licence of —

(i) the author or, in the case of a sound recording, cinematograph film or edition of a work, the maker or publisher, as the case may be; or

(ii) persons lawfully claiming under the author, maker or publisher.

(8) Nothing in subsections (6) and (7) shall affect any provision of this Act relating to the acts comprised in a copyright or to acts constituting infringements of copyrights or any of the provisions of Part IX.

[Aust. 1968, s. 29]

Ownership of copyright for particular purposes

25. —(1) In the case of a copyright of which (whether as a result of a partial assignment or otherwise) different persons are the owners in respect of its application to —

(a) the doing of different acts or classes of acts; or

(b) the doing of one or more acts or classes of acts in different countries or at different times,

the owner of the copyright, for any purpose of this Act, shall be deemed to be the person who is the owner of the copyright in respect of its application to the doing of the particular act or class of acts, or to the doing of the particular act or class of acts in the particular country or at the particular time, as the case may be, that is relevant to that purpose, and a reference in this Act to the prospective owner of a future copyright of which different persons are the prospective owners shall have a corresponding meaning.

(2) Without prejudice to subsection (1), where under any provision of this Act a question arises whether an article of any description has been imported or sold, or otherwise dealt with, without the licence of the owner of any copyright, the owner of the copyright, for the purpose of determining that question, shall be taken to be the person entitled to the copyright in respect of its application to the making of articles of that description in the country into which the article was imported, or, as the case may be, in which it was sold or otherwise dealt with.

(3) Where reference is made in this Act to an imported article the making of which was carried out without the consent of the owner of the copyright, the reference to the owner of the copyright shall be read as a reference to —

(a) the person entitled to the copyright in respect of its application to the making of an article of that description in the country where the article was made; or
(b) if there is no person entitled to the copyright in respect of its application to the making of an article of that description in the country where the article was made, the person entitled to the copyright in respect of that application in Singapore.

(4) The making of the article shall be deemed to have been carried out with the consent of the owner referred to in subsection (3) if, after disregarding all conditions as to the sale, distribution or other dealings in the article after its making, the article was made with his licence (other than a compulsory licence).

[14/94]

[Aust. 1968, s. 30]

Commercial rental arrangement

25A. —(1) In this Act, "commercial rental arrangement", in relation to a sound recording or a computer program, signifies an arrangement that has the following features:

- (a) regardless of the way in which the arrangement is expressed, it is in substance an arrangement under which a copy of the sound recording or computer program is made available by a person on terms that it will or may be returned to the person;
- (b) the arrangement is made in the course of the conduct of a business; and
- (c) the arrangement provides for the copy to be made available —

- (i) for payment in money or money's worth; or
- (ii) as part of the provision of a service for which payment in money or money's worth is to be made.

[6/98]

(2) Notwithstanding anything in subsection (1), an arrangement shall not be regarded as a commercial rental arrangement if, regardless of the way in which the arrangement is expressed, it is an arrangement for the lending of a copy of a sound recording or computer program under which the amount payable is intended to be no more than —

- (a) the amount necessary to recover the costs, including overheads, of the arrangement; or
- (b) a deposit to secure the return of the copy.

[6/98]

[Aust. 1968, s. 30A]

PART III

COPYRIGHT IN ORIGINAL LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS

Division 1 — Nature, Duration and Ownership of Copyright in Works

Nature of copyright in original works

26. —(1) For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a work, is the exclusive right —

- (a) in the case of a literary, dramatic or musical work, to do all or any of the following acts:
 - (i) to reproduce the work in a material form;
 - (ii) to publish the work if the work is unpublished;
 - (iii) to perform the work in public;
 - (iv) to communicate the work to the public;
 - (v) to make an adaptation of the work;

(vi) to do, in relation to a work that is an adaptation of the first-mentioned work, any of the acts specified in relation to the first-mentioned work in subparagraphs (i) to (v);

(b) in the case of an artistic work, to do all or any of the following acts:

(i) to reproduce the work in a material form;

(ii) to publish the work in Singapore or any country in relation to which this Act applies, if the work is unpublished;

(iii) to communicate the work to the public; and

(c) in the case of a computer program, to enter into a commercial rental arrangement in respect of the program unless the program is not the essential object of the rental.

[6/98;52/2004]

(2) Subsection (1) (c) shall not extend to entry into a commercial rental arrangement in respect of a machine or device in which a computer program is embodied if the program is not able to be copied in the course of the ordinary use of the machine or device.

[6/98]

(3) The reference in subsection (2) to a device shall not include a device of a kind ordinarily used to store computer programs, such as a floppy disc, a device of the kind commonly known as a CD ROM, or an integrated circuit.

[6/98]

(4) Subsection (1) (c) shall not extend to entry into a commercial rental arrangement in respect of a computer program if —

(a) the copy of the computer program, not being an infringing copy, was purchased by a person (referred to in this subsection as the program owner) before 16th April 1998;

(b) the commercial rental arrangement is entered into in the ordinary course of a business conducted by the program owner; and

(c) the program owner was conducting the same business, or another business that consisted of, or included, the making of commercial rental arrangements in respect of computer programs, when the copy was purchased.

[6/98]

[Aust. 1968, s. 31]

Original works in which copyright subsists

27. —(1) Subject to the provisions of this Act, copyright shall subsist in an original literary, dramatic, musical or artistic work that is unpublished and of which the author —

(a) was a qualified person at the time when the work was made; or
(b) if the making of the work extended over a period — was a qualified person for a substantial part of that period.

(2) Subject to the provisions of this Act, where an original literary, dramatic, musical or artistic work has been published —

(a) copyright shall subsist in the work; or
(b) if copyright in the work subsisted immediately before its first publication, copyright shall continue to subsist in the work, if, but only if —
(c) the first publication of the work took place in Singapore;
(d) the author of the work was a qualified person at the time when the work was first published; or
(e) the author died before that time but was a qualified person immediately before his death.

(3) Notwithstanding subsection (2) but subject to the remaining provisions of this Act, copyright shall subsist in —

(a) an original artistic work that is a building situated in Singapore; or
(b) an original artistic work that is attached to, or forms part of, such a building.

(4) In this section, "qualified person" means a citizen of Singapore or a person resident in Singapore.

[Aust. 1968, s. 32]

Duration of copyright in original works

28. —(1) This section shall have effect subject to sections 27 (2) and 29.

(2) Subject to this section, where, by virtue of this Part, copyright subsists in a literary, dramatic or musical work, or in an artistic work other than a photograph, that copyright shall continue to subsist until the expiration of 70 years after the expiration of the calendar year in which the author of the work died.

[21/2004]

(3) If, before the death of the author of a literary, dramatic or musical work —

(a) the work had not been published;

(b) the work had not been performed in public;

(c) the work had not been broadcast;

(d) the work had not been included in a cable programme; and

(e) records of the work had not been offered or exposed for sale to the public,

the copyright in the work shall continue to subsist until the expiration of 70 years after the expiration of the calendar year in which the work is first published, performed in public, or broadcast, or included in a cable programme, or records of the work are first offered or exposed for sale to the public, whichever is the earliest of those events to happen.

[21/2004]

(4) A reference in subsection (3) to the doing of an act in relation to a work shall be read as including a reference to the doing of that act in relation to an adaptation of the work.

(5) If, before the death of the author of an engraving, the engraving had not been published, the copyright in the engraving shall continue to subsist until the expiration of 70 years after the expiration of the calendar year in which the engraving is first published.

[21/2004]

(6) Copyright subsisting in a photograph by virtue of this Part shall continue to subsist until the expiration of 70 years after the expiration of the calendar year in which the photograph is first published.

[21/2004]

[Aust. 1968, s. 33]

Duration of copyright in anonymous and pseudonymous work

29. —(1) Subject to subsection (2), where the first publication of a literary, dramatic or musical work, or of an artistic work other than a photograph, is anonymous or pseudonymous, section 28 shall not apply in relation to the work but any copyright subsisting in the work by virtue of this Part shall continue to

subsist until the expiration of the period of 70 years after the expiration of the calendar year in which the work was first published.

[21/2004]

(2) Subsection (1) shall not apply in relation to a work if at any time before the expiration of the period referred to in that subsection, the identity of the author of the work is generally known or can be ascertained by reasonable inquiry.

[Aust. 1968, s. 34]

Ownership of copyright in original works

30. —(1) This section shall have effect subject to Part X.

(2) Subject to this section, the author of a literary, dramatic, musical or artistic work shall be entitled to any copyright subsisting in the work by virtue of this Part.

(3) The operation of subsection (4), (5) or (6) in relation to copyright in a particular work may be excluded or modified by agreement.

(4) Where a literary, dramatic or artistic work is made by the author in pursuance of the terms of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship and is so made for the purpose of publication in a newspaper, magazine or similar periodical, the proprietor shall be entitled to any copyright subsisting in the work by virtue of this Part insofar as the copyright relates to —

(a) publication of the work in any newspaper, magazine or similar periodical; or
(b) reproduction of the work for the purpose of its being so published,
but not otherwise.

(5) Subject to subsection (4), where —

(a) a person makes, for valuable consideration, an agreement with another person for the taking of a photograph, the painting or drawing of a portrait or the making of an engraving by the other person; and

(b) the work is made in pursuance of the agreement,
the first-mentioned person shall be entitled to any copyright subsisting in the work by virtue of this Part, except that if the work is required for any particular purpose, that purpose shall be communicated to that other person and that

other person shall be entitled to restrain the doing, otherwise than for that particular purpose, of any act comprised in the copyright in the work.

(6) Where a literary, dramatic or artistic work to which subsections (4) and (5) do not apply, or a musical work, is made by the author in pursuance of the terms of his employment by another person under a contract of service or apprenticeship, that other person shall be entitled to any copyright subsisting in the work by virtue of this Part.

[Aust. 1968, s. 35]

Division 2 — Infringement of Copyright In Works

Infringement by doing acts comprised in copyright

31. —(1) Subject to the provisions of this Act, the copyright in a literary, dramatic, musical or artistic work is infringed by a person who, not being the owner of the copyright, and without the licence of the owner of the copyright, does in Singapore, or authorises the doing in Singapore of, any act comprised in the copyright.

(2) Sections 32 to 34 shall not affect the generality of subsection (1).

[Aust. 1968, s. 36]

Infringement by importation for sale or hire

32. The copyright in a literary, dramatic, musical or artistic work is infringed by a person who, without the licence of the owner of the copyright, imports an article into Singapore for the purpose of —

(a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;

(b) distributing the article —

(i) for the purpose of trade; or

(ii) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or

(c) by way of trade exhibiting the article in public,

where he knows, or ought reasonably to know, that the making of the article was carried out without the consent of the owner of the copyright.

[Aust. 1968, s. 37]

Infringement by sale and other dealings

33. —(1) The copyright in a literary, dramatic, musical or artistic work is infringed by a person who, in Singapore, and without the licence of the owner of the copyright —

(a) sells, lets for hire, or by way of trade offers or exposes for sale or hire, an article; or

(b) by way of trade exhibits an article in public,
where he knows, or ought reasonably to know, that the making of the article constituted an infringement of the copyright or, in the case of an imported article, the making of the article was carried out without the consent of the owner of the copyright.

(2) For the purposes of subsection (1), the distribution of any articles —

(a) for the purpose of trade; or

(b) for any other purpose to an extent that affects prejudicially the owner of the copyright concerned,

shall be taken to be the sale of those articles.

[Aust. 1968, s. 38]

Infringing copies made on machines installed in libraries and archives

34. Where —

(a) a person makes an infringing copy of, or part of, a work or a published edition of a work or of 2 or more works on a machine for the making, by reprographic reproduction, of copies of documents, being a machine installed by or with the approval of the body administering a library or archives on the premises of the library or archives, or outside those premises for the convenience of persons using the library or archives; and

(b) there is affixed to, or in close proximity to, the machine, in a place readily visible to persons using the machine, a notice of the prescribed dimensions and in accordance with the prescribed form,

neither the body administering the library or archives nor the officer-in-charge of the library or archives shall be taken to have authorised the making of the infringing copy by reason only that the copy was made on that machine.

[Aust. 1968, s. 39]

Division 3 — Acts not Constituting Infringements of Copyright Works

Fair dealing in relation to works

35. —(1) Subject to this section, a fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for any purpose other than a purpose referred to in section 36 or 37 shall not constitute an infringement of the copyright in the work.

[52/2004]

(1A) The purposes for which a dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, may constitute a fair dealing under subsection (1) shall include research and study.

[52/2004]

(2) For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with a literary, dramatic, musical or artistic work or with an adaptation of a literary, dramatic or musical work, being a dealing by way of copying the whole or a part of the work or adaptation, constitutes a fair dealing with the work or adaptation for any purpose other than a purpose referred to in section 36 or 37 shall include —

- (a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;
- (b) the nature of the work or adaptation;
- (c) the amount and substantiality of the part copied taken in relation to the whole work or adaptation;
- (d) the effect of the dealing upon the potential market for, or value of, the work or adaptation; and
- (e) the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price.

[52/2004]

(3) Notwithstanding subsection (2), a dealing with a literary, dramatic or musical work, or with an adaptation of such a work, being a dealing by way of the copying, for the purposes of research or study —

(a) if the work or adaptation comprises an article in a periodical publication, of the whole or a part of that work or adaptation; or
(b) in any other case, of not more than a reasonable portion of the work or adaptation,
shall be taken to be a fair dealing with that work or adaptation for the purpose of research or study.

[52/2004]

(4) Subsection (3) shall not apply to a dealing by way of the copying of the whole or a part of an article in a periodical publication if another article in that publication, being an article dealing with a different subject-matter, is also copied.

Fair dealing for purpose of criticism or review

36. A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, shall not constitute an infringement of the copyright in the work if it is for the purpose of criticism or review, whether of that work or of another work, and a sufficient acknowledgment of the work is made.

[Aust. 1968, s. 41]

Fair dealing for purpose of reporting current events

37. A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, shall not constitute an infringement of the copyright in the work if it is for the purpose of, or is associated with, the reporting of current events —

- (a) in a newspaper, magazine or similar periodical and a sufficient acknowledgment of the work is made; or
(b) by means of broadcasting or a cable programme service or in a cinematograph film.

[Aust. 1968, s. 42 (1)]

Reproduction for purposes of judicial proceedings or professional advice

38. The copyright in a literary, dramatic, musical or artistic work is not infringed by anything done —

- (a) for the purposes of a judicial proceeding or of a report of a judicial proceeding;

(b) for the purpose of seeking professional advice from an advocate and solicitor;
or

(c) for the purpose of, or in the course of, the giving of professional advice by an advocate and solicitor.

[Aust. 1968, s. 43]

Temporary reproduction made in course of communication

38A. —(1) Subject to subsection (3), the copyright in a work is not infringed by the making of a temporary or transient reproduction of the work if —

(a) the reproduction is made incidentally as part of the technical process of making or receiving a communication; and

(b) the act of making the communication itself does not constitute an infringement.

[22/2005]

(2) Subject to subsection (3), the copyright in an adaptation of a work is not infringed by the making of a temporary or transient reproduction of the adaptation if —

(a) the reproduction is made incidentally as part of the technical process of making or receiving a communication; and

(b) the act of making the communication itself does not constitute an infringement.

[22/2005]

(3) Subsections (1) and (2) shall not apply to the making of a temporary or transient reproduction of a work, or an adaptation of a work, if the reproduction of the work or adaptation that is communicated —

(a) is an infringing copy of the work or adaptation; or

(b) is a reproduction that, if it had been made in Singapore, would have been an infringing copy of the work or adaptation.

[22/2005]

(4) Nothing in subsections (1) and (2) shall be construed as authorising any subsequent use of the temporary or transient reproduction of the work or adaptation.

[22/2005]

[Aust. 1968, s. 43A]

Back-up copy of computer program, etc.

39. —(1) Subject to subsection (2), the copyright in a literary work being a computer program is not infringed by the making of a reproduction of the work, or of a computer program being an adaptation of the work, if —

(a) the reproduction is made by, or on behalf of, the owner of the copy (referred to in this section as the original copy) from which the reproduction is made; and
(b) the reproduction is made for the purpose only of being used, by or on behalf of the owner of the original copy, in lieu of the original copy in the event that the original copy is lost, destroyed or rendered unusable.

(2) Subsection (1) shall not apply to the making of a reproduction of a computer program, or of an adaptation of a computer program, from an infringing copy of the computer program.

[6/98]

(3) Notwithstanding section 31, it is not an infringement for the owner of a copy of a computer program or of a compilation within the meaning of section 7A in an electronic form to make or authorise the making of another copy or adaptation of that computer program or compilation provided that such a new copy or adaptation is created as an essential step in the utilisation of the computer program or compilation in conjunction with a machine and that it is used in no other manner.

[38/99]

(4) Where an act is permitted under this section —

(a) it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act; and
(b) any such term or condition shall, insofar as it purports to prohibit or restrict the act, be void.

[6/98]

(5) For the purposes of this section, a reference to a copy of a computer program or compilation or of an adaptation of a computer program or compilation is a reference to any article in which the computer program, compilation or adaptation is reproduced in a material form.

[38/99]

[Aust. 1968, s. 43A (as amended by Aust. Am. 1984, s. 4)]

Decompilation

39A. —(1) Subject to subsection (2), the copyright in a literary work, being a computer program expressed in a low level language, is not infringed by a lawful user of the computer program decompiling it if —

- (a) it is necessary to decompile the computer program to achieve the objective of obtaining the information necessary to create an independent computer program which can be operated with the computer program decompiled or with another computer program (referred to in this section as the permitted objective); and
- (b) the information so obtained is not used for any purpose other than the permitted objective.

[52/2004]

(2) Subsection (1) shall not apply if the lawful user —

- (a) has readily available to him 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 the information in order to achieve the permitted objective; or
- (d) uses the information —
 - (i) to create a computer program which is substantially similar in its expression to the computer program decompiled; or
 - (ii) to do any act restricted by copyright.

[52/2004]

(3) Where an act is permitted under this section —

- (a) it shall be irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act; and
- (b) any such term or condition shall, insofar as it purports to prohibit or restrict the act, be void.

[52/2004]

(4) For the avoidance of doubt, this section is without prejudice to the generality of section 35 and does not limit the operation of that section.

[52/2004]

(5) For the purposes of this section and sections 39B and 39C, a person is a lawful user of a computer program if he has a right to use the computer program, whether under a licence to do any act restricted by the copyright in the computer program or otherwise.

[52/2004]

(6) In this section, "decompiling", in relation to a computer program expressed in a low level language, means —

(a) converting the computer program into a version expressed in a higher level language; or

(b) incidentally in the course of so converting the computer program, copying the computer program,

and "decompile" shall be construed accordingly.

[52/2004]

Observing, studying and testing of computer programs

39B. —(1) The copyright in a literary work, being a computer program, is not infringed by a lawful user of the computer program observing, studying or testing the functioning of the computer program in order to determine the ideas and principles which underlie any element of the computer program, if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the computer program which he is entitled to do.

[52/2004]

(2) Where an act is permitted under this section —

(a) it shall be irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act; and

(b) any such term or condition shall, insofar as it purports to prohibit or restrict the act, be void.

[52/2004]

(3) For the avoidance of doubt, this section is without prejudice to the generality of section 35 and does not limit the operation of that section.

[52/2004]

Other acts permitted to lawful users

39C. —(1) Subject to subsection (3), the copyright in a literary work, being a computer program, is not infringed by a lawful user of the computer program copying or adapting the computer program, if such copying or adapting is necessary for his lawful use.

[52/2004]

(2) For the avoidance of doubt, it may be necessary for the lawful use of a computer program to copy or adapt the computer program for the purpose of correcting errors in the computer program.

[52/2004]

(3) Subsection (1) shall not apply to any copying or adapting permitted under section 39 or 39A.

[52/2004]

Inclusion of works in collections for use by educational institutions

40. —(1) The copyright in a published literary, dramatic, musical or artistic work is not infringed by the inclusion of a short extract from the work, or, in the case of a published literary, dramatic or musical work, from an adaptation of the work, in a collection of literary, dramatic, musical or artistic works contained in a book, sound recording or cinematograph film and intended for use by educational institutions if —

(a) the collection is described in an appropriate place in the book, on the label of each record embodying the recording or of its container, or in the film, as being intended for use by educational institutions;

(b) the work or adaptation was not published for the purpose of being used by educational institutions; and

(c) a sufficient acknowledgment of the work or adaptation is made.

(2) Subsection (1) shall not apply in relation to the copyright in a work if, in addition to the extract concerned, 2 or more other extracts from, or from adaptations of, works (being works in which copyright subsists at the time when the collection is published) by the author of the first-mentioned work are contained in that collection, or are contained in that collection taken together

with every similar collection, if any, of works intended for use by educational institutions and published by the same publisher within the period of 5 years immediately preceding the publication of the first-mentioned collection.

[Aust. 1968, s. 44]

Accessories to imported articles

40A. —(1) The copyright in a work embodied in an accessory to an article is not infringed by a person who, without the licence of the owner of the copyright, imports the article into Singapore for a purpose mentioned in section 32 (a), (b) or (c) unless the article is an infringing copy.

[14/94]

(2) The operation of this Act in relation to a work embodied in an article shall not be affected by the operation of this section in relation to a work embodied in an accessory to the article.

[14/94]

(3) If an article is imported into Singapore for a purpose mentioned in section 32 (a), (b) or (c) and the importation is not, by reason of this section, an infringement of the copyright in a work embodied in an accessory to the article, the use of the accessory with the article for any such purpose shall not be an infringement of the copyright in the work, and section 33 shall not apply to the accessory.

[14/94]

Division 4 — Acts not Constituting Infringements of Copyright in Literary, Dramatic and Musical Works

Reading or recitation in public or for a communication

41. The reading or recitation in public, or the inclusion in a communication of a reading or recitation, of an extract of reasonable length from a published literary or dramatic work, or from an adaptation of such a work, shall not constitute an infringement of the copyright in the work if a sufficient acknowledgment of the work is made.

[52/2004]

[Aust. 1968, s. 45]

Religious performances

42. A performance of a literary, dramatic or musical work of a religious nature, or an adaptation of such a work, in the course of services at a place of worship or other religious assembly shall not constitute an infringement of the copyright in the work.

Reproduction for purpose of broadcasting

43. —(1) Where the broadcasting by a person of a literary, dramatic or musical work, or of an adaptation of such a work, would not (whether by reason of an assignment or a licence or of the operation of a provision of this Act) constitute an infringement of the copyright in the work, but the making by the person of a sound recording or a cinematograph film of the work or adaptation would, apart from this subsection, constitute such an infringement, the copyright in the work is not infringed by his making such a recording or film solely for the purpose of the broadcasting of the work or adaptation.

(2) Subsection (1) shall not apply in relation to a recording or film if a record embodying the recording or a copy of the film is used for a purpose other than —

(a) the broadcasting of the work or adaptation in circumstances that do not (whether by reason of an assignment or a licence or of the operation of a provision of this Act) constitute an infringement of the copyright in the work; or
(b) the making of further records embodying the recording or further copies of the film for the purpose of the broadcasting of the work or adaptation in such circumstances.

(3) Subsection (1) shall not apply in relation to a recording or film where a record embodying the recording or a copy of the film is used for the purpose of the broadcasting of the work or adaptation by a person who is not the maker of the recording or film unless the maker has paid to the owner of the copyright in the work such amount as they agree or, in default of agreement, has given an undertaking in writing to the owner to pay to him such amount as is determined by a Copyright Tribunal, on the application of either of them, to be equitable remuneration to the owner for the making of the recording or film.

(4) A person who has given an undertaking referred to in subsection (3) is liable, when a Copyright Tribunal has determined the amount to which the undertaking relates, to pay that amount to the owner of the copyright in the work and the owner may recover that amount in a court of competent jurisdiction from the person as a debt due to the owner.

[6/98]

(5) Subsection (1) shall not apply in relation to a recording or film unless all the records embodying the recording or all the copies of the film are destroyed or are delivered, with the consent of the director of National Archives, to the National Archives of Singapore —

(a) before the expiration of the period of 6 months or, in the case of a recording or film made by a non-profit organisation solely for its own broadcast, 2 years, commencing on the day on which any of the records embodying the recording or any of the copies of the film is first used for broadcasting the work or adaptation in accordance with that subsection; or

(b) before the expiration of such further period, if any, as is agreed between the maker of the recording or film and the owner of the copyright in the work.

[6/98]

[Aust. 1968, s. 47]

Reproduction for purpose of simulcasting

43A. —(1) Subject to subsections (2) and (3), where the broadcasting by a person of a literary, dramatic or musical work, or of an adaptation of such a work, would not for any reason constitute an infringement of the copyright in the work, but the making by the person of a sound recording or a cinematograph film of the work or adaptation would, apart from this subsection, constitute such an infringement, the copyright in the work is not infringed by the person making the recording or film solely for the purpose of simulcasting the work or adaptation in digital form.

[52/2004]

(2) Subsection (1) shall not apply in relation to the making of a recording or film if a record embodying the recording or a copy of the film is used for a purpose other than —

- (a) the simulcasting of the work or adaptation in circumstances that do not for any reason constitute an infringement of the copyright in the work; or
- (b) the making of —
 - (i) further records embodying the recording; or
 - (ii) further copies of the film,for the purpose of simulcasting the work or adaptation in such circumstances.

[52/2004]

(3) Subsection (1) shall not apply in relation to the making of a recording or film unless all the records embodying the recording or all the copies of the film made under that subsection are destroyed before the expiration of the prescribed period.

[52/2004]

[Aust. 1968, s. 47AA]

Division 5 — Copying of Works in Libraries

Interpretation of this Division

44. In this Division, a reference to an article contained in a periodical publication shall be read as a reference to anything (other than an artistic work) appearing in such a publication.

[6/98]

[Aust. 1968, s. 48]

Copying by libraries and archives for users

45. —(1) A person may furnish to the officer-in-charge of a library (not being a library that is conducted for the profit, direct or indirect, of an individual or individuals) or the officer-in-charge of archives —

- (a) a request in writing to be supplied with a copy of an article, or a part of an article, contained in a periodical publication or of the whole or a part of a published literary, dramatic or musical work other than an article contained in a periodical publication; and
- (b) a declaration signed by him stating —
 - (i) that he requires the copy for the purpose of research or study and will not use it for any other purpose; and

(ii) that he has not previously been supplied with a copy of that article or other work, or the same part of the article or other work, as the case may be, by an authorised officer of the library or archives, or that he has lost, destroyed or damaged any such copy previously supplied to him.

[52/2004]

(2) Subject to this section, where a request and declaration referred to in subsection (1) are furnished to the officer-in-charge of a library or archives, an authorised officer of the library or archives may, unless the declaration contains a statement that to his knowledge is untrue in a material particular, make, or cause to be made, the copy to which the request relates and supply the copy to the person who made the request.

(3) Where a charge is made for making and supplying a copy to which a request under subsection (1) relates, subsection (2) shall not apply in relation to the request if the amount of the charge exceeds the cost of making and supplying the copy and a reasonable contribution to the general expenses of the library.

(4) Subsection (2) shall not apply in relation to a request for a copy of, or parts of, 2 or more articles contained in the same periodical publication unless the articles relate to the same subject-matter.

(5) Subsection (2) shall not apply to a request for a copy of the whole of a literary, dramatic or musical work (other than an article contained in a periodical publication), or to a copy of a part of such a work that contains more than a reasonable portion of the work unless —

(a) the work forms part of the library or archives collection; and

(b) before the copy is made, an authorised officer of the library has, after reasonable investigation, made a declaration stating that he is satisfied that a copy (not being a secondhand copy) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

[6/98]

(6) The copyright in an article contained in a periodical publication is not infringed by the making, in relation to a request under subsection (1), of a copy of the article, or of a part of the article, in accordance with subsection (2) unless the copy is supplied to a person other than the person who made the request.

(7) The copyright in a published literary, dramatic or musical work other than an article contained in a periodical publication is not infringed by the making, in relation to a request under subsection (1), of a copy of the work, or of a part of the work, in accordance with subsection (2) unless the copy is supplied to a person other than the person who made the request.

(7A) If an article contained in a periodical publication or a published work (other than an article contained in a periodical publication) is acquired, in electronic form, as part of the collection of a library or archives, the copyright in the article or published work is not infringed by the officer-in-charge of the library or archives making it available online within the premises of the library or archives in such a manner that users cannot, by using any equipment supplied by the library or archives —

- (a) make an electronic copy of the article or work; or
- (b) communicate the article or work.

[52/2004]

(8) The regulations may exclude the application of subsection (6) or (7) in such cases as are specified in the regulations.

(9) Subsections (6) and (7) shall not apply to the making, in accordance with subsection (2), of an electronic copy of —

- (a) an article, or a part of an article, contained in a periodical publication; or
- (b) the whole or part of a published work, other than such an article,

in relation to a request under this section for communication to the person who made the request, unless —

(i) before or when the electronic copy is communicated to the person, a notice is given to the person in accordance with the regulations stating —

(A) that the electronic copy has been made under this section and that the article or work might be subject to copyright protection under this Act; and

(B) such other matters as may be prescribed; and

(ii) as soon as practicable after the electronic copy is communicated to the person, the electronic copy made in accordance with subsection (2) and held by the library or archives is destroyed.

[52/2004]

[Aust. 1968, s. 49]

Copying by libraries or archives for other libraries or archives

46. —(1) The officer-in-charge of a library may request, or cause another person to request, the officer-in-charge of another library to supply the officer-in-charge of the first-mentioned library with a copy of an article, or a part of an article, contained in a periodical publication, or of the whole or a part of a published literary, dramatic or musical work other than an article contained in a periodical publication —

(a) for the purpose of including the copy in the collection of the first-mentioned library, not being in substitution for a subscription to such periodical publication or work or a purchase of such work; or

(b) for the purpose of supplying the copy to a person who has made a request for the copy under section 45.

(2) Subject to this section, where a request is made by or on behalf of the officer-in-charge of a library to the officer-in-charge of another library under subsection (1), an authorised officer of the last-mentioned library may make, or cause to be made, the copy to which the request relates and supply the copy to the officer-in-charge of the first-mentioned library.

(3) Where, under subsection (2), an authorised officer of a library makes a copy of the whole or a part of a work and supplies it to the officer-in-charge of another library in accordance with a request made under subsection (1) —

(a) the copy shall, for all purposes of this Act, be deemed to have been made on behalf of an authorised officer of the other library for the purpose for which the copy was requested; and

(b) an action shall not be brought against the body administering that first-mentioned library, or against any officer or employee of that library, for infringement of copyright by reason of the making or supplying of that copy.

(4) Subject to this section, where a copy of the whole or a part of an article contained in a periodical publication, or of any other published literary, dramatic or musical work is, by virtue of subsection (3), to be deemed to have been made on behalf of an authorised officer of a library, the copyright in the article or other work is not infringed by the making of the copy.

(5) The regulations may exclude the application of subsection (4) in such cases as are specified in the regulations.

(6) Where a charge is made for making and supplying a copy to which a request under subsection (1) relates, subsection (4) shall not apply in relation to the request if the amount of the charge exceeds the cost of making and supplying the copy and a reasonable contribution to the general expenses of the library.

(7) Subsection (4) shall not apply to or in relation to a copy of the whole or a part of an article or other work that is, by virtue of subsection (3), to be deemed to have been made on behalf of an authorised officer of a library for a purpose referred to in subsection (1) unless, as soon as practicable after the request was made, an authorised officer of the library made a declaration that set out particulars of the request (including the purpose for which the copy was requested) and stated —

(a) in a case where a copy of the whole or a part of the article or other work had previously been supplied, in accordance with a request under subsection (1), for the purpose of inclusion in the collection of the library — that the copy so supplied had been lost, destroyed or damaged, whichever was appropriate; and

(b) in a case where the copy was a copy of the whole of a literary, dramatic or musical work (other than an article contained in a periodical publication) or of a part of such a work that contains more than a reasonable portion of the work — that the copy was made and supplied as part of an inter-library arrangement which does not have the effect or the purpose of enabling participating libraries to receive copies of the whole works or parts thereof, by way of systematic reproduction and supply of copies, in such aggregate quantities as substitutes for a subscription to or purchase of such works.

(8) In this section, a reference to a library shall be read as a reference to a library other than a library that is conducted for the profit, direct or indirect, of an individual or individuals, and as including a reference to archives.

[Aust. 1968, s. 50]

Copying or communication of unpublished works in libraries or archives

47. —(1) Where, at a time more than 50 years after the expiration of the calendar year in which the author of a literary, dramatic or musical work, or of an artistic

work being a photograph or engraving, died, and more than 75 years after the time at which, or the expiration of the period during which, the work was made, copyright subsists in the work but —

(a) the work has not been published; and

(b) the original version, or a copy, of the work is kept in the collection of a library or archives where it is, subject to any regulations governing that collection, open to public inspection,

the copyright in the work is not infringed —

(i) by the making of a copy, or the communication, of the work by a person for the purpose of research or study or with a view to publication; or

(ii) by the making of a copy, or the communication, of the work by or on behalf of the officer-in-charge of that library or archives, if the copy or work is supplied (whether by communication or otherwise) to a person who satisfies the officer-in-charge of that library or archives that he requires the copy or work for the purpose of research or study or with a view to publication and that he will not use it for any other purpose.

[38/99;52/2004]

(2) Where the original version, or a copy, of a thesis or other similar literary work that has not been published is kept in a library of a university or other similar institution or in archives, the copyright in the thesis or other work is not infringed by the making of a copy, or the communication, of the thesis or other work by or on behalf of the officer-in-charge of the library or archives, if the copy, thesis or other work is supplied (whether by communication or otherwise) to a person who satisfies an authorised officer of the library or archives that he requires the copy, thesis or other work for the purpose of research or study.

[38/99;52/2004]

[Aust. 1968, s. 51]

Copying of works for preservation and other purposes

48. —(1) Subject to subsection (4), the copyright in a work that forms, or formed, part of the collection of a library or archives is not infringed by the making, by or on behalf of the officer-in-charge of the library or archives, of a copy of the work

—

- (a) if the work is the original version of the work — for the purpose of preserving the original version against loss or deterioration or for the purpose of research that is being, or is to be, carried out at the library or archives in which the work is held or at another library or other archives;
- (b) if the work is held in the collection in a published form but has been damaged or has deteriorated — for the purpose of replacing the work; or
- (c) if the work has been held in the collection in a published form but has been lost or stolen — for the purpose of replacing the work.

[38/99]

(2) The copyright in a work that is held in the collection of a library or archives is not infringed by the making, by or on behalf of the officer-in-charge of the library or archives, for a purpose other than a purpose for which a copy may be made under subsection (1), of a single copy of the work so held.

[38/99]

(3) Subsection (1) shall not apply in relation to a work held in published form in the collection of a library or archives unless an authorised officer of the library or archives has, after reasonable investigation, made a declaration stating that he is satisfied that a copy (not being a secondhand copy) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

(4) Where a copy of an unpublished work is made under subsection (1) by or on behalf of the officer-in-charge of a library or archives for the purpose of research that is being, or is to be, carried out at another library or archives, the supply of the copy by or on behalf of the officer to the other library or archives does not, for any purpose of this Act, constitute publication of the work.

[38/99]

[Aust. 1968, s. 51A]

Publication of unpublished works kept in libraries

49. —(1) Where —

- (a) a published literary, dramatic or musical work (referred to in this section as the new work) incorporates the whole or a part of a work (referred to in this section as the old work) to which section 47 (1) applied immediately before the new work was published;

(b) before the new work was published, the prescribed notice of the intended publication of the work had been given; and

(c) immediately before the new work was published, the identity of the owner of the copyright in the old work was not known to the publisher of the new work, then, for the purposes of this Act, the first publication of the new work, and any subsequent publication of the new work whether in the same or in an altered form, shall, insofar as it constitutes a publication of the old work, be deemed not to be an infringement of the copyright in the old work or an unauthorised publication of the old work.

(2) Subsection (1) shall not apply to a subsequent publication of the new work incorporating a part of the old work that was not included in the first publication of the new work unless —

(a) section 47 (1) would, but for this section, have applied to that part of the old work immediately before that subsequent publication;

(b) before that subsequent publication, the prescribed notice of the intended publication had been given; and

(c) immediately before that subsequent publication, the identity of the owner of the copyright in the old work was not known to the publisher of that subsequent publication.

(3) Where a work, or part of a work, has been published and, by virtue of this section, the publication is to be deemed not to be an infringement of the copyright in the work, the copyright in the work is not infringed by a person who, after that publication took place, broadcasts the work or that part of the work, as the case may be, or includes it in a cable programme or performs it in public, or makes a record of it.

[Aust. 1968, s. 52]

Application of Division to illustrations accompanying articles and other works

50. Where an article, thesis or literary, dramatic or musical work is accompanied by artistic works provided for the purpose of explaining or illustrating the article, thesis or other work (referred to in this section as the illustrations), the provisions of this Division shall apply as if —

- (a) where any of those sections provides that the copyright in the article, thesis or work is not infringed — the reference to that copyright included a reference to any copyright in the illustrations;
- (b) a reference in section 45, 46, 47 or 48 to a copy of the article, thesis or work included a reference to a copy of the article, thesis or work together with a copy of the illustrations;
- (c) a reference in section 45 or 46 to a copy of a part of the article or work included a reference to a copy of that part of the article or work together with a copy of the illustrations that were provided for the purpose of explaining or illustrating that part; and
- (d) a reference in section 48 or 49 to the doing of any act in relation to the work included a reference to the doing of that act in relation to the work together with the illustrations.

[Aust. 1968, s. 53]

Division 6 — Copying of Works for Educational Purposes

Copying by non-reprographic means for purpose of a course of education

50A. —(1) Copyright in a work is not infringed by its being copied for the purposes of a course of education, provided the copying —

- (a) is done by a person conducting or undergoing the course of education; and
- (b) is not by means of a reprographic process.

[6/98]

(2) In this section —

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

"facsimile copy" includes a copy that is reduced or enlarged in scale;

"in electronic form" means in a form usable only by electronic means;

"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 cinematograph film or sound recording.

[6/98]

[UK CPD 1988, s. 32]]

Multiple copying or communication of insubstantial portions of works

51. —(1) Copyright in a literary or dramatic work is not infringed by the making of one or more copies of a part of the work in an edition of the work by any person if the copying is carried out on the premises of an educational institution for the purposes of a course of education provided by the institution.

[38/99;52/2004]

(1A) Copyright in a literary or dramatic work is not infringed by the communication of a part of the work in an edition of the work by any person if the communication is initiated from the premises of an educational institution for the purposes of a course of education provided by the institution.

[52/2004]

(2) Subsection (1) shall not apply to the making of a copy of, and subsection (1A) shall not apply to the communication of, the whole of a work.

[38/99;52/2004]

(3) Subsection (1) shall not apply to the making of a copy of, and subsection (1A) shall not apply to the communication of, more than 5 of the pages of a work in an edition of the work unless —

- (a) there are more than 500 pages in the edition; and
- (b) the total number of pages so copied does not exceed 5% of the total number of pages in the edition.

[38/99;52/2004]

(4) Subsection (1) shall not apply to the making of a copy, and subsection (1A) shall not apply to the communication, of a part of a work in an edition of the work, being an edition stored on any medium by electronic means and not divided into pages, if the part copied or communicated exceeds, in the aggregate —

- (a) 5% of the total number of bytes in the edition; and

(b) 5% of the total number of words in that edition or, where it is not practicable to use the total number of words as a measure, 5% of the contents of the edition.

[52/2004]

(5) Where —

(a) a person makes or causes to be made a copy of a part of a work; and

(b) subsection (1) applies to the making of that copy,

that subsection shall not apply to the making, by or on behalf of that person, of a copy of any other part of that work within 14 days after the day on which the previous copy was made.

[38/99]

(5A) Where —

(a) a person communicates or causes to be communicated a part of a work; and

(b) subsection (1A) applies to that communication,

that subsection shall not apply to the communication, by or on behalf of that person, of any other part of that work within 14 days after the day on which the previous communication was made.

[52/2004]

(6) In this section —

(a) a reference to an edition of a work includes a reference to an edition of works that include that work; and

(b) a reference to the making of a copy of a part of a work on the premises of an educational institution for the purposes of a course of education provided by the institution includes a reference to the making of a copy of that part of the work in an electronic form on a network operated or controlled by the educational institution concerned to enable persons undertaking a course of education provided by the educational institution to access the work.

[38/99]

[Aust. 1968, s. 135ZG]

Multiple copying or communication under statutory licence by educational institutions

52. —(1) Subject to this section, the copyright in an article contained in a periodical publication is not infringed by the making of copies, or the

communication, of the whole or a part of that article, by or on behalf of the body administering an educational institution for the educational purposes of that or another educational institution.

[6/98;52/2004]

(2) Subject to this section, the copyright in a work, other than an article in a periodical publication, is not infringed by the making of copies, or the communication, of the whole or a part of that work, by or on behalf of the body administering an educational institution for the educational purposes of that or another educational institution.

[6/98;52/2004]

(3) (*Deleted by Act 6/98*)

(4) Subsection (1) shall not apply in relation to copies of, or of parts of, 2 or more articles contained in the same periodical publication unless the articles relate to the same subject-matter.

(5) Subsection (2) shall not apply in relation to copies of, or of more than a reasonable portion of, a work that has been separately published unless the person who makes the copies, or causes the copies to be made, for or on behalf of the body administering the educational institution, is satisfied, after reasonable investigation, that copies (not being secondhand copies) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

(6) Subsection (1) shall not apply to copies of the whole or a part of an article contained in a periodical publication, being copies made, by or on behalf of the body administering an educational institution, for the educational purposes of an educational institution, unless there is made, by or on behalf of that body, as soon as practicable after the making of those copies, a record of the copying setting out such particulars as may be prescribed by the regulations.

[6/98]

(7) Subsection (2) shall not apply to copies of the whole or a part of a work (not being an article contained in a periodical publication), being copies made, by or on behalf of the body administering an educational institution, for the educational purposes of an educational institution, unless there is made, by or on behalf of that body, as soon as practicable after the making of those copies, a

record of the copying setting out such particulars as may be prescribed by the regulations.

[6/98]

(7A) Subsection (1) shall not apply in relation to the communication of, or of parts of, 2 or more articles contained in the same periodical publication, unless the articles relate to the same subject-matter.

[52/2004]

(7B) Subsection (2) shall not apply in relation to the communication of, or of more than a reasonable portion of, a work that has been separately published, unless the person who communicates the work or portion, or causes the work or portion to be communicated, for or on behalf of the body administering the educational institution, is satisfied, after reasonable investigation, that copies (not being secondhand copies) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

[52/2004]

(7C) Subsection (1) shall not apply to the communication of the whole or a part of an article contained in a periodical publication by or on behalf of the body administering an educational institution, for the educational purposes of an educational institution, unless there is made, by or on behalf of that body, as soon as practicable after the communication, a record of the communication setting out such particulars as may be prescribed by the regulations.

[52/2004]

(7D) Subsection (2) shall not apply to the communication of the whole or a part of a work (not being an article contained in a periodical publication) by or on behalf of the body administering an educational institution, for the educational purposes of an educational institution, unless there is made, by or on behalf of that body, as soon as practicable after the communication, a record of the communication setting out such particulars as may be prescribed by the regulations.

[52/2004]

(8) For the purposes of subsections (6), (7), (7C) and (7D), a record of the copying or communication, as the case may be, of a work or a part of a work —

(a) shall be kept in writing or in any other manner prescribed by the regulations;
and

(b) if it is kept in writing, shall be in accordance with the prescribed form.

[22/2005]

(9) Where copies of, or of part of, a work consisting of an article in a periodical publication made, as provided in subsection (1), by or on behalf of the body administering an educational institution for the educational purposes of an educational institution are made for distribution to persons undertaking a correspondence course, or an external study course, provided by the educational institution for the educational purposes of which those copies are made, otherwise than as a part of the lecture notes prepared in connection with that course, the record made in relation to them in accordance with subsection (6) may state that they are copies to which this subsection applies.

[6/98]

(10) Where copies of, or of part of, a work, other than an article in a periodical publication, made as provided in subsection (2) by or on behalf of the body administering an educational institution for the educational purposes of an educational institution —

(a) are made for distribution to persons undertaking a correspondence course, or an external study course, provided by the educational institution for the educational purposes of which those copies are made, otherwise than as a part of the lecture notes prepared in connection with that course; and

(b) do not contain more than a reasonable portion of the work,
the record made in relation to them in accordance with subsection (7) may state that they are copies to which this subsection applies.

[6/98;52/2004]

(11) Where copies of the whole or a part of a work, not being copies stated in the record to be copies to which subsection (9) or (10) applies, are made by or on behalf of the body administering an educational institution and, by virtue of this section, the making of those copies does not infringe copyright in the work, that body shall, if the owner of the copyright in the work makes a request, in writing, at any time during the prescribed period after the making of the copies,

for payment for the making of the copies, pay to the owner such an amount by way of equitable remuneration for the making of those copies as is agreed upon between the owner and the body or, in default of agreement, such amount as is determined by a Copyright Tribunal on the application of either the owner or the body.

(11A) Where the whole or a part of a work consisting of an article in a periodical publication is communicated as provided in subsection (1) —

(a) by or on behalf of the body administering an educational institution for the educational purposes of an educational institution; and

(b) to persons undertaking a correspondence course, or an external study course, provided by the educational institution, otherwise than as a part of the lecture notes prepared in connection with that course,

the record made in relation to the communication in accordance with subsection (7C) may state that it is a communication to which this subsection applies.

[52/2004]

(11B) Where —

(a) the whole or a part of a work, other than an article in a periodical publication, is communicated as provided in subsection (2) —

(i) by or on behalf of the body administering an educational institution for the educational purposes of an educational institution; and

(ii) to persons undertaking a correspondence course, or an external study course, provided by the educational institution, otherwise than as a part of the lecture notes prepared in connection with that course; and

(b) the communication does not contain more than a reasonable portion of the work,

the record made in relation to the communication in accordance with subsection (7D) may state that it is a communication to which this subsection applies.

[52/2004]

(11C) Where —

(a) the whole or a part of a work is communicated by or on behalf of the body administering an educational institution;

(b) the communication is not a communication to which subsection (11A) or (11B) applies; and

(c) by virtue of this section, the communication does not infringe copyright in the work,

that body shall, if the owner of the copyright in the work makes a request in writing, at any time during the prescribed period after the communication, for payment for the communication, pay to the owner such an amount by way of equitable remuneration for the communication as is agreed upon between the owner and the body or, in default of agreement, as is determined by a Copyright Tribunal on the application of either the owner or the body.

[52/2004]

(12) Where a Copyright Tribunal has determined the amount of equitable remuneration payable to the owner of copyright in a work by the body administering an educational institution in relation to copies of the whole or a part of that work that have been made, or the communication of the whole or a part of that work, by or on behalf of that body in reliance on this section, the owner may recover that amount from the body in a court of competent jurisdiction as a debt due to him.

[52/2004]

(13) Nothing in this section shall affect the right of the owner of copyright in a work to grant a licence authorising the body administering an educational institution —

(a) to make, or cause to be made, copies of the whole or a part of the work; or

(b) to communicate, or cause to be communicated, the whole or a part of the work,

without infringement of that copyright.

[52/2004]

(14) For the purposes of this section, a reference to the making of copies of the whole or a part of an article contained in a periodical publication, or of a work, for the educational purposes of an educational institution includes the making of a copy of the whole of the article or work, or that part of the article or work, in an electronic form on a network operated or controlled by that or another

educational institution to enable persons undertaking a course of education provided by that or another educational institution to access the article or work, or that part of the article or work.

[38/99]

(15) For the purposes of this section, a reference to the communication of the whole or a part of an article contained in a periodical publication, or of a work, for the educational purposes of an educational institution includes the communication of the whole of the article or work, or that part of the article or work, in an electronic form on a network operated or controlled by that or another educational institution to enable persons undertaking a course of education provided by that or another educational institution to access the article or work, or that part of the article or work.

[52/2004]

Things done for purposes of examination

52A. The copyright in a work is not infringed by anything done for the purposes of an examination, whether by way of setting the questions, communicating the questions to the candidates or answering the questions.

[6/98]

Application of Division to illustrations accompanying articles and other works

53. Where an article or other literary, dramatic or musical work is accompanied by an artistic work or artistic works provided for the purpose of explaining or illustrating the article or other work, the provisions of this Division shall apply as if —

- (a) where any of those sections provides that the copyright in the article or other work is not infringed — the reference to that copyright included a reference to any copyright in that artistic work or those artistic works;
- (b) a reference in section 51 or 52 to a copy of an article or other work included a reference to a copy of the article or other work together with a copy of that artistic work or those artistic works;
- (c) a reference in section 51 or 52 to a copy of a part of an article or other work included a reference to a copy of that part of the article or other work together

with a copy of the artistic work or artistic works provided for the purpose of explaining or illustrating that part;

(d) a reference in section 51 to a copy of a page of a literary, dramatic or musical work in an edition of the work or of works that include the work included a reference to a copy of a page in such an edition that contained that work and an artistic work or artistic works provided for the purpose of explaining or illustrating that part of that work; and

(e) a reference in section 51 to a copy of pages of a literary, dramatic or musical work in an edition of that work or of works that include that work included a reference to a copy of pages in such an edition that contained a part of that work and an artistic work or artistic works provided for the purpose of explaining or illustrating that part of that work.

[Aust. 1968, s. 135ZM]

Division 7 — Copying of Works in Institutions Assisting Handicapped Readers and Institutions Assisting Intellectually Handicapped Readers

Multiple copying under statutory licence by institutions assisting handicapped readers

54. —(1) The copyright in a literary or dramatic work that has been published is not infringed by the making, by or on behalf of the body administering an institution assisting handicapped readers, of a record embodying a sound recording of the work or of a part of the work, for use by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake, or for the purpose of otherwise instructing himself on any matter.

[52/2004]

(2) The copyright in a literary or dramatic work that has been published is not infringed by the making, by or on behalf of the body administering an institution assisting handicapped readers, of a Braille version, a large-print version or a photographic version, of the work or of a part of the work, for use by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake, or for the purpose of otherwise instructing himself on any matter.

(3) Where a sound recording of a work has been published, subsection (1) shall not apply to the making of any record embodying a sound recording of the work (including a record that is a copy of that first-mentioned sound recording) for or on behalf of the body administering an institution assisting handicapped readers unless the person who makes that record, or causes that record to be made, is satisfied, after reasonable investigation, that no new record that embodies only a sound recording of the work can be obtained within a reasonable time at an ordinary commercial price.

(4) Where a Braille version of a work has been separately published, subsection (2) shall not apply to the making of a Braille version of the work, or of a part of the work, unless the person who makes that version, or causes that version to be made, for or on behalf of the body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a Braille version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

(5) Where a large-print version of a work has been separately published, subsection (2) shall not apply to the making of a large-print version of the work, or of a part of the work, unless the person who makes the version, or causes that version to be made, for or on behalf of the body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a large-print version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

(6) Where a photographic version of a work has been separately published, subsection (2) shall not apply to the making of a photographic version of the work, or of a part of the work, unless the person who makes the version, or causes that version to be made, for or on behalf of the body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a photographic version of the work, being a

version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

(7) Subsections (1) and (2) shall not apply to the reproduction of the whole or a part of an article contained in a periodical publication by way of the making, by or on behalf of the body administering an institution assisting handicapped readers, of a handicapped reader's copy of the article or of that part of the article unless there is made, by or on behalf of that body, as soon as practicable after the making of that copy, a record of the copying setting out such particulars as may be prescribed by the regulations.

(8) Subsections (1) and (2) shall not apply to the reproduction of the whole or a part of a work (not being an article contained in a periodical publication) by way of the making, by or on behalf of the body administering an institution assisting handicapped readers, of a handicapped reader's copy of the work or of that part of the work unless there is made, by or on behalf of that body, as soon as practicable after the making of that copy, a record of the copying setting out such particulars as may be prescribed by the regulations.

(9) For the purposes of subsections (7) and (8), a record of the copying of a work or a part of a work —

(a) shall be kept in writing or in any other manner prescribed by the regulations; and

(b) if it is kept in writing, shall be in accordance with the prescribed form.

(10) Where a handicapped reader's copy of the whole or a part of a work is made by or on behalf of the body administering an institution assisting handicapped readers and, by virtue of this section, the making of that copy does not infringe copyright in the work, that body shall, if the owner of the copyright in the work makes a request, in writing, at any time during the prescribed period after the making of the copy, for payment for the making of the copy, pay to the owner such an amount by way of equitable remuneration for the making of that copy as is agreed upon between the owner and the body, or, in default of agreement, such amount as is determined by a Copyright Tribunal on the application of either the owner or the body.

(11) Where a Copyright Tribunal has determined the amount of equitable remuneration payable to the owner of copyright in a work by the body administering an institution assisting handicapped readers in relation to a handicapped reader's copy of the whole or a part of that work that has been made by or on behalf of that body in reliance on this section, the owner may recover that amount from the body in a court of competent jurisdiction as a debt due to him.

(12) Notwithstanding any other provision of this Act, copyright shall not vest in the maker of the handicapped reader's copy by reason of his making that copy.

(13) Nothing in this section shall affect the right of the owner of copyright in a work to grant a licence authorising the body administering an institution assisting handicapped readers to make, or cause to be made, sound recordings of, or Braille, large-print or photographic versions of, the whole or a part of the work without infringement of that copyright.

(14) For the purposes of this section, a record, or a Braille version, a large-print version or a photographic version, of a work shall be taken to be a new record, or a new Braille version, a new large-print version or a new photographic version, of the work, as the case may be, if it is not a secondhand record, or a secondhand Braille version, a secondhand large-print version or a secondhand photographic version, of the work, as the case may be.

(15) In this section, a reference to a photographic version of a work or a part of a work shall be read as a reference to a copy or copies of the work or a part of a work produced as a film-strip or series of separate transparencies designed to meet the needs of handicapped readers.

Multiple copying under statutory licence by institutions assisting intellectually handicapped readers

54A. —(1) The copyright in a work that has been published is not infringed by the making, by or on behalf of the body administering an institution assisting intellectually handicapped readers, of a copy of the whole or a part of the work, for use in the provision, whether by the institution or otherwise, of assistance to intellectually handicapped readers.

(2) Subsection (1) shall not apply to the making of any copy of a work, being a work that has been separately published in a form that would be suitable for use in the provision of the assistance referred to in that subsection, unless the person who makes the copy, or causes that copy to be made, for or on behalf of the body administering an institution assisting intellectually handicapped readers is satisfied, after reasonable investigation, that no new copy of the work in a form suitable for use in the provision of that assistance can be obtained within a reasonable time at an ordinary commercial price.

[6/98]

(3) For the purposes of subsection (2), a copy shall be taken to be new if it is not secondhand.

[6/98]

(4) Subsection (1) shall not apply to the reproduction of the whole or a part of an article contained in a periodical publication by way of the making, by or on behalf of the body administering an institution assisting intellectually handicapped readers, of an intellectually handicapped reader's copy of the article or of that part of the article unless there is made, by or on behalf of that body, as soon as practicable after the making of that copy, a record of the copying setting out such particulars as may be prescribed by regulations.

[6/98]

(5) Subsection (1) shall not apply to the reproduction of the whole or a part of a work (not being an article contained in a periodical publication) by way of the making, by or on behalf of the body administering an institution assisting intellectually handicapped readers, of an intellectually handicapped reader's copy of the work or of that part of the work unless there is made, by or on behalf of that body, as soon as practicable after the making of that copy, a record of the copying setting out such particulars as may be prescribed by regulations.

[6/98]

(6) For the purposes of subsections (4) and (5), a record of the copying of a work or a part of a work —

- (a) shall be kept in writing or in any other manner prescribed by regulations; and
- (b) if it is kept in writing, shall be in accordance with the prescribed form.

[6/98]

(7) Where an intellectually handicapped reader's copy of the whole or a part of a work is made by or on behalf of the body administering an institution assisting intellectually handicapped readers and, by virtue of this section, the making of that copy does not infringe copyright in the work, that body shall, if the owner of the copyright in the work makes a request, in writing, at any time during the prescribed period after the making of the copy, for payment for the making of the copy, pay to the owner such an amount by way of equitable remuneration for the making of that copy as is agreed upon between the owner and the body, or, in default of agreement, such amount as is determined by a Copyright Tribunal on the application of either the owner or the body.

[6/98]

(8) Where a Copyright Tribunal has determined the amount of equitable remuneration payable to the owner of the copyright in a work by the body administering an institution assisting handicapped readers in relation to an intellectually handicapped reader's copy of the whole or a part of that work that has been made by or on behalf of that body in reliance on this section, the owner may recover that amount from the body in a court of competent jurisdiction as a debt due to him.

[6/98]

(9) Notwithstanding any other provision of this Act, copyright shall not vest in the maker of the intellectually handicapped reader's copy by reason of his making that copy.

[6/98]

(10) Nothing in this section shall affect the right of the owner of the copyright in a work to grant a licence authorising the body administering an institution assisting intellectually handicapped readers to make, or cause to be made, copies of the whole or a part of the work without infringement of that copyright.

[6/98]

Division 8 — Recording of Musical Works

Interpretation of this Division

55. —(1) In this Division —

(a) a reference to a musical work shall be read as a reference to the work in its original form or to an adaptation of the work;

(b) a reference to the owner of the copyright in a literary, dramatic or musical work shall, unless the contrary intention appears, be read as a reference to the person who is entitled to authorise the making in, and the importation into, Singapore of records of the works; and

(c) a reference to sale of a record by retail or to retail sale of a record shall be read as not including a reference to —

(i) sale for a consideration not consisting wholly of money; or

(ii) sale by a person not ordinarily carrying on the business of making or selling records.

(2) In this Division, where a musical work is comprised partly in one record and partly in another record or other records, all the records shall be treated as if they constituted a single record.

(3) A reference in this Division to a record of a musical work does not include a reference to a sound-track associated with visual images forming part of a cinematograph film.

[Aust. 1968, s. 54]

Conditions upon which manufacturer may make records of musical work

56. —(1) Subject to this Division, the copyright in a musical work is not infringed by a person (referred to in this section as the manufacturer) who makes a record of the work or an adaptation thereof in Singapore, if —

(a) records of the work, or, as the case may be, of a similar adaptation of the work, have previously been made in, or imported into, Singapore for the purposes of retail sale, and were so made or imported by, or with the licence of, the owner of the copyright in the work;

(b) before the making of the record, the manufacturer gave to the owner of the copyright the prescribed notice of his intention to make it;

(c) the manufacturer intends to sell the record by retail, or to supply it for the purpose of its being sold by retail by another person, or intends to use it for making other records which are to be so sold or supplied; and

(d) in the case of a record which is sold by retail or supplied for the purpose of its being sold by retail by another person, the manufacturer pays to the owner of the copyright, in the prescribed manner and at the prescribed time, a royalty of an amount ascertained in accordance with the provisions of this Division.

[6/98]

(2) Subsection (1) shall not apply in relation to a record of an adaptation of a musical work if the adaptation debases the work.

(3) Without limiting the generality of subsection (1) (d), the regulations made for the purposes of that subsection may provide —

(a) that payment of the royalties in respect of records, or of an amount, ascertained in accordance with the regulations, in respect of the royalties in respect of records, is, or is in such classes of cases as are specified in those regulations, to be made before the records are sold or supplied by the manufacturer; and

(b) that the doing of such acts as are specified in those regulations, being such acts as the Minister considers convenient for ensuring the receipt by the owner of the copyright of the royalties in respect of records or, if the owner of the copyright cannot be found by reasonable inquiry, as the Minister considers reasonable in the circumstances, is to be deemed to constitute payment of the royalties.

[Aust. 1968, s. 55]

Amount of royalty

57. —(1) Subject to this Division, the royalty payable in respect of a record is 5% of the retail selling price of the record, which shall be determined in the manner prescribed by the regulations.

(2) If the royalty payable in respect of a record under this section includes a fraction of a cent that is less than or more than one-half of a cent —

(a) where that fraction is less than one-half of a cent — that fraction shall be treated as one-half of a cent; and

(b) where that fraction is more than one-half of a cent — that fraction shall be treated as a whole cent.

(3) If, apart from this subsection, the royalty payable in respect of a record under this section would be less than one cent, that royalty shall be one cent.

Provisions relating to royalty where 2 or more works are on the one record

58. Where a record comprises 2 or more musical works, whether or not there is any other matter comprised in the record —

(a) if the record includes a work in which copyright does not subsist or works in which copyrights do not subsist — the royalty payable in respect of the record is, subject to paragraph (b), the amount that bears to the amount that, but for this section, would be the amount of the royalty the same proportion as the number of works in the record in which copyrights subsist bears to the total number of works in the record; and

(b) if the record includes 2 or more works in which copyrights subsist —

(i) subject to this Division, the royalty payable in respect of the record shall not be less than one cent in respect of each work in the record in which copyright subsists; and

(ii) if the owners of the copyrights in the works in the record in which copyrights subsist are different persons — there shall be paid to the owner of the copyright in each work, in respect of that work, an amount ascertained by dividing the amount of the royalty payable in respect of the record by the number of works in the record in which copyrights subsist.

[Aust. 1968, s. 57]

Revision of royalty and minimum royalty

59. —(1) If at any time after 10th April 1988 it appears to the Minister charged with the responsibility for trade and industry that the royalty, or the minimum royalty, payable in respect of records generally or in respect of records included in a particular class of records is not equitable, he may request a Copyright Tribunal to hold an inquiry into the matter and report the result of its inquiry to him.

(2) At any time after a Copyright Tribunal has made a report in relation to the royalty, or the minimum royalty, payable in respect of records generally or in

respect of records included in a particular class of records, the regulations may provide that the relevant provision of this Act, in its application in respect of records generally or in respect of records included in that class of records, as the case may be, shall have effect as if it were subject to such variations as are provided by the regulations, being such variations as the Minister thinks equitable.

(3) Where a Copyright Tribunal has made a report in relation to the royalty, or the minimum royalty, payable in respect of records included in a particular class of records (whether the report related only to records included in that class or also related to other records), the Minister charged with the responsibility for trade and industry shall not, before the expiration of 5 years after the report was made, request an inquiry under subsection (1) in relation to the royalty, or the minimum royalty, as the case may be, payable in respect of records included in that class.

(4) In this section, "the relevant provision of this Act" means —

(a) in relation to the royalty payable in respect of any records — section 57 (1) or, if that section is affected by regulations made for the purposes of this section, that section as so affected; and

(b) in relation to the minimum royalty payable in respect of any records — sections 57 (3) and 58 (*b*) (i) or, if those provisions are affected by regulations made for the purposes of this section, those provisions as so affected.

Conditions upon which manufacturer may include part of a literary or dramatic work in a record of a musical work

60. —(1) Where —

(a) a person makes in Singapore a record comprising the performance of a musical work in which words are sung, or are spoken incidentally to or in association with the music, whether or not there is any other matter comprised in the record;

(b) copyright does not subsist in that work or, if copyright so subsists, the requirements specified in section 56 (1) are complied with in relation to that copyright;

(c) the words consist or form part of a literary or dramatic work in which copyright subsists;

(d) a record of the musical work in which those words, or words substantially the same as those words, were sung, or were spoken incidentally to or in association with the music has previously been made in, or imported into, Singapore for the purpose of retail sale and was so made or imported by, or with the licence of, the owner of the copyright in the literary or dramatic work; and

(e) the like notice was given to the owner of the copyright in the literary or dramatic work as is required by section 56 (1) (b) to be given to the owner of the copyright (if any) in the musical work and there is paid to the owner of the copyright in the literary or dramatic work such amount (if any) as is ascertained in accordance with this section,

the making of the record shall not constitute an infringement of the copyright in the literary or dramatic work.

(2) Where copyright does not subsist in the musical work, the amount to be paid in respect of the literary or dramatic work is an amount equal to the royalty that, but for this section, would have been payable in respect of the musical work if copyright had subsisted in the musical work.

(3) Where copyright subsists in the musical work as well as in the literary or dramatic work —

(a) if the copyrights in those works are owned by the same person — an amount is not payable in respect of the literary or dramatic work; or

(b) if the copyrights in those works are owned by different persons — the royalty that, but for this section, would have been payable in respect of the musical work shall be apportioned between them in such manner as they agree, or, in default of the agreement, as is determined by a Copyright Tribunal on the application of either of them.

(4) Where the owner of the copyright in a musical work and the owner of the copyright in a literary or dramatic work do not agree on the manner in which an amount is to be apportioned between them but the person who made the record gives an undertaking in writing to each owner to pay to him the portion of that amount that a Tribunal determines to be payable to him, then —

(a) paragraph (d) of section 56 (1) and paragraph (e) of subsection (1) of this section shall have effect as if the payments referred to in those paragraphs had been made; and

(b) the person who made the record shall be liable, when the amount to which an undertaking relates is determined, to pay that amount to the owner of the copyright to whom the undertaking was given and the owner may recover that amount in a court of competent jurisdiction from that person as a debt due to the owner.

(5) The regulations made for the purposes of section 56 (1) (d) in relation to payments to the owner of the copyright in a musical work shall have the like effect, with any necessary modifications, for the purposes of subsection (1) (e) in relation to payments to the owner of the copyright in a literary or dramatic work.

[Aust. 1968, s. 59]

Making inquiries in relation to previous records

61. Where —

(a) a person makes inquiries, as prescribed, for the purpose of ascertaining whether a record of a musical work, or a record of a musical work in which words consisting or forming part of a literary or dramatic work were sung or spoken, has previously been made in, or imported into, Singapore by, or with the licence of, the owner of the copyright in the musical work or in the literary or dramatic work, as the case may be, for the purpose of retail sale or for use in making other records for the purpose of retail sale; and

(b) an answer to those inquiries is not received within the prescribed period, a record of that musical work, or a record of that work in which those words were sung or spoken, as the case may be, shall, for the purposes of the application of this Division —

(i) in relation to the person who made the inquiries; or

(ii) in relation to a person who makes records of the musical work, or records of that work in which those words or substantially the same words are sung or spoken, for the purpose of supplying those records to the person who made the inquiries in pursuance of an agreement entered into between those persons for the making of the records,

be taken to have been previously made in, or imported into, Singapore with the licence of the owner of that copyright for the purpose of retail sale or for use in making other records for the purpose of retail sale, as the case may be.

[Aust. 1968, s. 61]

Application of Division in relation to record of part of a work

62. —(1) Subject to subsection (2), this Division shall apply in relation to a record of a part of a musical work in like manner as it applies in relation to a record of the whole of the work.

(2) Section 56 (1) shall not apply in relation to —

(a) a record of the whole of a work unless the previous record referred to in paragraph (a) of that subsection was a record of the whole of the work; and

(b) a record of a part of a work unless that previous record was a record of, or comprising, that part of the work.

Division 9 — Acts not Constituting Infringements of Copyright in Artistic Works

Sculptures and certain other works in public places

63. —(1) This section shall apply to sculptures and to works of artistic craftsmanship of the kind referred to in paragraph (c) of the definition of “artistic work” in section 7.

(2) The copyright in a work to which this section applies that is situated, otherwise than temporarily, in a public place, or in premises open to the public, is not infringed by the making of a painting, drawing, engraving or photograph of the work or by the inclusion of the work in a cinematograph film or in a television broadcast.

[Aust. 1968, s. 65]

Buildings and models of buildings

64. The copyright in a building or a model of a building is not infringed by the making of a painting, drawing, engraving or photograph of the building or model or by the inclusion of the building or model in a cinematograph film or in a television broadcast.

[Aust. 1968, s. 66]

Incidental filming or televising of artistic works

65. Without prejudice to sections 63 and 64, the copyright in an artistic work is not infringed by the inclusion of the work in a cinematograph film or in a television broadcast if its inclusion in the film or broadcast is only incidental to the principal matters represented in the film or broadcast.

[Aust. 1968, s. 67]

Publication of artistic works

66. The copyright in an artistic work is not infringed by the publication of a painting, drawing, engraving, photograph or cinematograph film if, by virtue of section 63, 64 or 65, the making of that painting, drawing, engraving, photograph or film did not constitute an infringement of the copyright.

[Aust. 1968, s. 68]

Artistic works included in a cable programme

67. Sections 63, 64 and 65 shall apply in relation to a cable programme in like manner as they apply in relation to a television broadcast.

Reproduction for purpose of including work in television broadcast or cable programme

68. —(1) Where the inclusion of an artistic work in a television broadcast or cable programme made by a person would not (whether by reason of an assignment or licence or of the operation of a provision of this Act) constitute an infringement of copyright in the work but the making by the person of a cinematograph film of the work would, apart from this subsection, constitute such an infringement, the copyright in the work is not infringed by his making such a film solely for the purpose of the inclusion of the work in a television broadcast or cable programme.

(2) Subsection (1) shall not apply in relation to a film if a copy of the film is used for a purpose other than —

(a) the inclusion of the work in a television broadcast or cable programme in circumstances that do not (whether by reason of an assignment or licence or of the operation of a provision of this Act) constitute an infringement of the copyright in the work; or

(b) the making of further copies of the film for the purpose of the inclusion of the work in such a broadcast or programme.

(3) Subsection (1) shall not apply in relation to a film where a copy of the film is used for the purpose of the inclusion of the work in a television broadcast or cable programme made by a person who is not the maker of the film unless the maker has paid to the owner of the copyright in the work such amount as they agree or, in default of agreement, has given an undertaking in writing to the owner to pay to him such amount as is determined by a Copyright Tribunal, on the application of either of them, to be equitable remuneration to the owner for the making of the film.

(4) A person who has given an undertaking referred to in subsection (3) shall be liable, when a Copyright Tribunal has determined the amount to which the undertaking relates, to pay that amount to the owner of the copyright in the work and the owner may recover that amount in a court of competent jurisdiction from the person as a debt due to the owner.

(5) Subsection (1) shall not apply in relation to a film unless all the copies of the film are destroyed or are delivered, with the consent of the director of the National Archives, to the National Archives of Singapore —

(a) before the expiration of the period of 6 months or, in the case of a film made by a non-profit organisation solely for its own broadcast, 2 years, commencing on the day on which any of the copies of the film is first used for including the work in a television broadcast or cable programme in accordance with that subsection; or

(b) before the expiration of such further period, if any, as is agreed between the maker of the film and the owner of the copyright in the work.

[6/98]

[Aust. 1968, s. 70]

Reproduction of work in different dimensions

69. For the purposes of this Act —

(a) the making of an object of any kind that is in 3 dimensions does not infringe the copyright in an artistic work that is in 2 dimensions; and

(b) the making of an object of any kind that is in 2 dimensions does not infringe the copyright in an artistic work that is in 3 dimensions, if the object would not appear to persons who are not experts in relation to objects of that kind to be a reproduction of the artistic work.

Special exception for artistic works which have been industrially applied

70. —(1) Notwithstanding section 69, the making of any useful article in 3 dimensions (including a reproduction in 2 dimensions reasonably required for the making of the article) does not infringe the copyright in an artistic work if, when the useful article or reproduction is made, the artistic work has been industrially applied in Singapore or in any other country at any time before the useful article or reproduction is made.

[25/2000]

(2) For the purposes of subsection (1), an artistic work is applied industrially if —

(a) more than 50 reproductions in 3 dimensions are made of it, for the purposes of sale or hire;

(b) it is reproduced in 3 dimensions in one or more articles manufactured in lengths, for the purposes of sale or hire; or

(c) it is reproduced as a plate which has been used to produce —

(i) more than 50 reproductions of an object in 3 dimensions for the purposes of sale or hire; or

(ii) one or more articles in 3 dimensions manufactured in lengths for the purposes of sale or hire.

(3) For the purposes of subsection (2), 2 or more reproductions in 3 dimensions which are of the same general character and intended for use together are a single reproduction.

(4) In this section, "useful article" means an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.

(5) For the purposes of this section, an article that is normally part of a useful article is considered a useful article.

Reproduction of part of work in later work

71. —(1) The copyright in an artistic work is not infringed by the making of a

later artistic work by the same author if, in making the later work, the author does not repeat or imitate the main design of the earlier work.

(2) Subsection (1) shall have effect notwithstanding that part of the earlier work is reproduced in the later work and that, in reproducing the later work, the author used a mould, cast, sketch, plan, model or study made for the purposes of the earlier work.

[Aust. 1968, s. 72]

Reconstruction of buildings

72. —(1) Where copyright subsists in a building, the copyright is not infringed by a reconstruction of that building.

(2) Where a building has been constructed in accordance with architectural drawings or plans in which copyright subsists and has been so constructed by, or with the licence of, the owner of that copyright, that copyright is not infringed by a later reconstruction of the building by reference to those drawings or plans.

[Aust. 1968, s. 73]

Division 10 — Designs

Interpretation of this Division

73. —(1) In this Division “corresponding design”, in relation to an artistic work, means a design which, when applied to an article, results in a reproduction of that work.

(2) In this Division —

(a) references to the scope of the copyright in a registered design are references to the aggregate of the things, which, by virtue of the provisions of the Registered Designs Act (Cap. 266), the registered owner of the design has the exclusive right to do; and

(b) references to the scope of the copyright in a registered design as extended to all associated designs and articles are references to the aggregate of the things which, by virtue of that written law, the registered owner would have had the exclusive right to do if —

(i) when that design was registered, there had at the same time been registered every possible design consisting of that design with modifications or variations

not sufficient to alter the character or substantially to affect the identity thereof, and that owner had been registered as the owner of every such design; and (ii) the design in question, and every other design such as is mentioned in subparagraph (i), had been registered in respect of all the articles to which it was capable of being applied.

[25/2000]

[Aust. 1968, s. 74]

Special exception in respect of industrial design

74. —(1) Where copyright subsists in an artistic work and a corresponding design is registered or deemed registered under the Registered Designs Act, it shall not be an infringement of the copyright in the work —

- (a) to do anything, during the subsistence of the copyright in the registered design, which is within the scope of the copyright in the design; or
- (b) to do anything, after the copyright in the registered design has come to an end, which, if it had been done while the copyright in the design subsisted, would have been within the scope of that copyright as extended to all associated designs and articles.

[25/2000]

(1A) Subsection (1) shall have effect subject to the provisions of the Schedule in cases falling within the Schedule.

(2) Where copyright subsists in an artistic work, and —

- (a) a corresponding design is applied industrially (whether in Singapore or elsewhere) by or with the licence of the owner of the copyright in the work;
 - (b) articles to which the design has been so applied are sold, let for hire, or offered for sale or hire whether in Singapore or elsewhere; and
 - (c) at the time when those articles are sold, let for hire or offered or exposed for sale or hire, they are not articles in respect of which the corresponding design has been registered or, is deemed registered under the Registered Designs Act (Cap. 266),
- subsections (3), (4), (5) and (6) shall apply.

[14/94;25/2000]

(3) Subject to subsection (5) —

(a) during the relevant period of 15 years, it shall not be an infringement of the copyright in the work to do anything which, at the time when it is done, would have been within the scope of the copyright in the design if the design had, immediately before that time, been registered in respect of all relevant articles; and

(b) after the end of the relevant period of 15 years, it shall not be an infringement of the copyright in the work to do anything which, at the time when it is done, would, if the design had been registered immediately before that time, have been within the scope of the copyright in the design as extended to all associated designs and articles.

[6/98;25/2000]

(4) In subsection (3), “the relevant period of 15 years” means the period of 15 years beginning with the date on which articles, such as are mentioned in subsection (2) (b), were first sold, let for hire or offered for sale or hire, whether in Singapore or elsewhere.

[6/98;25/2000]

(5) For the purposes of subsections (2) and (3), no account shall be taken of any articles in respect of which, at the time when they were sold, let for hire, or offered for sale or hire, the design in question was excluded from registration under the provisions of the Registered Designs Act or the Registered Designs Act 1949 of the United Kingdom (U.K. 1949, c. 88) (as the case may be), by rules made under the applicable Act (which relates to the exclusion of designs for articles which are primarily literary or artistic in character).

[25/2000]

(6) For the purposes of any proceedings under this Act a design shall be conclusively presumed to have been excluded under subsection (5) if —

(a) before the commencement of those proceedings —

(i) an application for the registration of the design in respect of those articles under the Registered Designs Act (Cap. 266); or

(ii) an application for the registration of the design in respect of those articles under the Registered Designs Act 1949 of the United Kingdom (UK 1949, c. 88),

being an application made before the date of commencement of the Registered Designs Act,

has been refused;

(b) the reason or one of the reasons stated for the refusal was that the design was excluded from such registration by rules made under the Registered Designs Act or the Registered Designs Act 1949 of the United Kingdom (UK 1949, c. 88) (as the case may be); and

(c) no appeal against that refusal had been allowed before the date of the commencement of the proceedings or was pending on that date.

[25/2000]

(7) The regulations made for the purposes of this section may make provision for determining the circumstances in which a design is, for the purposes of this section, to be deemed to be applied industrially.

[Aust. 1968, ss. 75 and 77]

Division 11 — Works of Joint Authorship

References to all of joint authors

75. Subject to this Division, a reference in this Act to the author of a work shall, unless otherwise expressly provided by this Act, be read, in relation to a work of joint authorship, as a reference to all the authors of the work.

[Aust. 1968, s. 78]

References to any one or more of joint authors

76. The references in sections 27 and 29 (2) to the author of a work shall, in relation to a work of joint authorship, be read as references to any one or more of the authors of the work.

[Aust. 1968, s. 79]

References to whichever of joint authors died last

77. The references in sections 28 and 47 to the author of a work shall, in relation to a work of joint authorship other than a work to which section 78 applies, be read as references to the author who died last.

[Aust. 1968, s. 80]

Works of joint authorship published under pseudonyms

78. —(1) This section shall apply to a work of joint authorship that was first published under 2 or more names of which one was a pseudonym or 2 or more (but not all) were pseudonyms.

(2) This section shall also apply to a work of joint authorship that was first published under 2 or more names all of which were pseudonyms if, at any time within 70 years after the expiration of the calendar year in which the work was first published, the identity of one or more (but not all) of the authors was generally known or could be ascertained by reasonable inquiry.

[21/2004]

(3) The references in sections 28 and 47 to the author of a work shall, in relation to a work to which this section applies, be read as references to the author whose identity was disclosed or, if the identities of 2 or more of the authors were disclosed, as references to whichever of those authors died last.

(4) For the purposes of this section, the identity of an author shall be deemed to have been disclosed if —

(a) one of the names under which the work was published was the name of the author; or

(b) the identity of that author is generally known or can be ascertained by reasonable inquiry.

[Aust. 1968, s. 81]

Copyright to subsist in joint works without regard to any author who is an unqualified person

79. —(1) Section 30 (2) shall have effect, in relation to a work of joint authorship of which one of the authors is an unqualified person, or 2 or more (but not all) of the authors are unqualified persons, as if the author or authors, other than unqualified persons, had alone been the author or authors, as the case may be, of the work.

(2) For the purposes of subsection (1), a person is an “unqualified person” in relation to a work where, if he had alone been the author of the work, copyright would not have subsisted in the work by virtue of this Part.

[Aust. 1968, s. 82]

Inclusion of joint works in collections for use in educational institutions

80. The reference in section 40 (2) to other extracts from, or from adaptations of, works by the author of the extract concerned —

(a) shall be read as including a reference to extracts from, or from adaptations of, works by the author of the extract concerned in collaboration with any other person; or

(b) if the extract concerned is from, or from an adaptation of, a work of joint authorship — shall be read as including a reference to extracts from, or from adaptations of, works by any one or more of the authors of the extract concerned, or by any one or more of those authors in collaboration with any other person.

[Aust. 1968, s. 83]

PART IV

COPYRIGHT IN SUBJECT-MATTER OTHER THAN WORKS

Division 1 — Preliminary

Interpretation of this Part

81. —(1) In this Part —

"interactive service" means a service that enables an individual to receive —

(a) a transmission of a programme specially created for that individual; or

(b) on request, a transmission of a particular sound recording, whether or not as part of a programme, which is selected by or on behalf of that individual, but does not include any service that enables an individual to request that particular sound recording be performed for reception by the public at large or, in the case of a subscription service, by all subscribers of that service, unless the programming on each channel of that service consists substantially of sound recordings that are performed within an hour of the request or at a time designated by that individual;

"qualified person" means —

(a) a citizen of Singapore, or an individual resident in Singapore; or

(b) a body corporate incorporated under any written law in Singapore.

[38/99;52/2004]

(2) In this Part, a reference to the reproduction or making of a copy of any subject-matter includes a reference to the making of a copy which is transient or is incidental to some other use of the subject-matter.

[38/99]

[Aust. 1968, s. 84]

Division 2 — Nature of Copyright in Subject-Matter other than Works

Nature of copyright in sound recordings

82. —(1) For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a sound recording, is the exclusive right to do all or any of the following acts:

- (a) to make a copy of the sound recording;
- (b) to enter into a commercial rental arrangement in respect of the recording;
- (c) to publish the sound recording if it is unpublished;
- (d) to make available to the public a sound recording by means of, or as part of, a digital audio transmission.

[6/98;52/2004]

(2) Subsection (1) (b) shall not extend to entry into a commercial rental arrangement in respect of a sound recording if —

- (a) the copy of the sound recording, not being an infringing copy, was purchased by a person (referred to in this subsection as the record owner) before 16th April 1998;
- (b) the commercial rental arrangement is entered into in the ordinary course of a business conducted by the record owner; and
- (c) the record owner was conducting the same business, or another business that consisted of, or included, the making of commercial rental arrangements in respect of copies of sound recordings, when the copy was purchased.

[6/98]

(3) For the avoidance of doubt, “make available” for the purposes of this Part does not include the causing of a sound recording to be heard, otherwise than by means of or as part of a digital audio transmission.

[52/2004]

[Aust. 1968, s. 85]

Nature of copyright in cinematograph films

83. For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a cinematograph film, is the exclusive right to do all or any of the following acts:

- (a) to make a copy of the film;
- (b) to cause the film, insofar as it consists of visual images, to be seen in public;
- (c) to communicate the film to the public.

[52/2004]

[Aust. 1968, s. 86]

Nature of copyright in television broadcasts and sound broadcasts

84. —(1) For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a television broadcast or sound broadcast, is the exclusive right —

- (a) in the case of a television broadcast insofar as it consists of visual images — to make a cinematograph film of the broadcast, or a copy of such a film;
- (b) in the case of a sound broadcast, or of a television broadcast insofar as it consists of sounds — to make a sound recording of the broadcast, or a copy of such a sound recording;
- (c) in the case of a television broadcast — to cause it, insofar as it consists of visual images, to be seen in public, or, insofar as it consists of sounds, to be heard in public, if it is seen or heard by a paying audience; and
- (d) in the case of a television broadcast or a sound broadcast — to re-broadcast it or to otherwise communicate it to the public.

[52/2004]

(2) For the purposes of subsection (1) (c), a television broadcast shall be taken to be seen or heard by a paying audience if it is seen or heard by persons who either —

(a) have been admitted for payment to the place where the broadcast is to be seen or heard, or have been admitted for payment to a place of which that place forms part; or

(b) have been admitted to the place where the broadcast is to be seen or heard in circumstances where goods or services are supplied there at prices which exceed the prices usually charged at that place and are partly attributable to the facilities afforded for seeing or hearing the broadcast.

(3) For the purposes of subsection (2) (a), no account shall be taken —

(a) of persons admitted to the place in question as residents or inmates therein; or

(b) of persons admitted to that place 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 television broadcasts is only incidental to the main purposes of the club or society.

[Aust. 1968, s. 87]

Nature of copyright in cable programmes

85. —(1) For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a cable programme, is the exclusive right to do all or any of the following acts:

(a) insofar as it consists of visual images, to make a cinematograph film of it or a copy of such a film;

(b) insofar as it consists of sounds, to make a sound recording of it or a copy of such a sound recording;

(c) to cause it, insofar as it consists of visual images, to be seen in public, or, insofar as it consists of sounds, to be heard in public, if it is seen or heard by a paying audience;

(d) to communicate it to the public.

[52/2004]

(2) Subsection (1) shall apply whether the act in question is done by the reception of the programme or by making use of any record, print, negative, tape or other article on which the programme has been recorded.

(3) In relation to copyright in cable programmes, insofar as they consist of visual images, subsection (1) shall apply to any sequence of images sufficient to be seen as a moving picture; and accordingly, for the purpose of establishing an infringement of such copyright, it shall not be necessary to prove that the act in question extended to more than such a sequence of images.

(4) For the purposes of subsection (1) (c), a cable programme shall be taken to be seen or heard by a paying audience if it is seen or heard by persons who either —

(a) have been admitted for payment to the place where the programme is to be seen or heard, or have been admitted for payment to a place of which that place forms a part; or

(b) have been admitted to the place where the programme is to be seen or heard in circumstances where goods or services are supplied there at prices which exceed the prices usually charged at that place and are partly attributable to the facilities afforded for seeing or hearing the programme.

(5) For the purposes of subsection (4) (a), no account shall be taken —

(a) of persons admitted to the place in question as residents or inmates therein; or

(b) of persons admitted to that place as members of a club or society, where payment is only for membership of the club or society and the provision of facilities for seeing or hearing cable programmes is only incidental to the main purposes of the club or society.

Nature of copyright in published editions of works

86. For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a published edition of a literary, dramatic, musical or artistic work or of 2 or more literary, dramatic, musical or artistic works, is the exclusive right to make, by a means that includes a photographic process, a reproduction of the edition.

[Aust. 1968, s. 88]

Division 3 — Subject-Matter, other than Works, in which Copyright Subsists

Sound recordings in which copyright subsists

87. —(1) Subject to the provisions of this Act, copyright shall subsist in a sound recording of which the maker was a qualified person at the time when the recording was made.

(2) Without prejudice to subsection (1), copyright shall subsist, subject to the provisions of this Act, in a sound recording if the recording was made in Singapore.

(3) Without prejudice to subsections (1) and (2), copyright shall subsist, subject to the provisions of this Act, in a published sound recording if the first publication of the recording took place in Singapore.

[Aust. 1968, s. 89]

Cinematograph films in which copyright subsists

88. —(1) Subject to the provisions of this Act, copyright shall subsist in a cinematograph film of which the maker was a qualified person for the whole or a substantial part of the period during which the film was made.

(2) Without prejudice to subsection (1), copyright shall subsist, subject to the provisions of this Act, in a cinematograph film if the film was made in Singapore.

(3) Without prejudice to subsections (1) and (2), copyright shall subsist, subject to the provisions of this Act, in a published cinematograph film if the first publication of the film took place in Singapore.

[Aust. 1968, s. 90]

Television broadcasts and sound broadcasts in which copyright subsists

89. Subject to the provisions of this Act, copyright shall subsist —

(a) in a television broadcast made from a place in Singapore by the holder of a broadcasting licence; and

(b) in a sound broadcast made from a place in Singapore by the holder of a broadcasting licence.

[15/94]

[Aust. 1968, s. 91]

Cable programmes in which copyright subsists

90. —(1) Subject to the provisions of this Act, copyright shall subsist in a cable

programme which is included in a cable programme service provided by a qualified person in Singapore.

(2) Copyright shall not subsist in a cable programme by virtue of this section if the programme is included in the cable programme service by the reception and immediate re-transmission of a television broadcast or a sound broadcast.

Published editions of works in which copyright subsists

91. —(1) Subject to the provisions of this Act, copyright shall subsist in a published edition of a literary, dramatic, musical or artistic work, or of 2 or more literary, dramatic, musical or artistic works, where —

(a) the first publication of the edition took place in Singapore; or

(b) the publisher of the edition was a qualified person at the date of the first publication of the edition.

(2) Subsection (1) shall not apply to an edition that reproduces a previous edition of the same work or works.

[Aust. 1968, s. 92]

Division 4 — Duration of Copyright in Subject-Matter other than Works

Duration of copyright in sound recordings

92. Copyright subsisting in a sound recording by virtue of this Part shall continue to subsist until the expiration of 70 years after the expiration of the calendar year in which the recording is first published.

[21/2004]

[Aust. 1968, s. 93]

Duration of copyright in cinematograph films

93. —(1) Copyright subsisting in a cinematograph film by virtue of section 88 (1) or (2) shall continue to subsist until the film is published and, after the publication of the film, until the expiration of 70 years after the expiration of the calendar year in which the film was first published.

[21/2004]

(2) Copyright subsisting in a cinematograph film by virtue only of section 88 (3) shall continue to subsist until the expiration of 70 years after the expiration of the calendar year in which the film was first published.

[21/2004]

[Aust. 1968, s. 94]

Duration of copyright in television broadcasts and sound broadcasts

94. —(1) Copyright subsisting in a television broadcast or sound broadcast by virtue of this Part shall continue to subsist until the expiration of 50 years after the expiration of the calendar year in which the broadcast was made.

(2) Insofar as a television broadcast or sound broadcast is a repetition (whether the first or a subsequent repetition) of a previous television broadcast or sound broadcast to which section 89 applies, and is made by broadcasting visual images or sounds embodied in any article or thing —

(a) if it is made before the expiration of the period of 50 years after the expiration of the calendar year in which the previous broadcast was made — any copyright subsisting in it shall expire at the expiration of that period; and

(b) if it is made after the expiration of that period — copyright shall not subsist in it by virtue of this Part.

[Aust. 1968, s. 95]

Duration of copyright in cable programmes

95. Copyright subsisting in a cable programme by virtue of this Part shall continue to subsist until the expiration of 50 years from the end of the calendar year in which the cable programme is first included in the cable programme service.

Duration of copyright in published editions of works

96. Copyright subsisting in a published edition of a work or works by virtue of this Part shall continue to subsist until the expiration of 25 years after the expiration of the calendar year in which the edition was first published.

[Aust. 1968, s. 96]

Division 5 — Ownership of Copyright in Subject-Matter other than Works

Ownership of copyright in sound recordings

97. —(1) This section shall have effect subject to Part X.

(2) Subject to subsection (3), the maker of a sound recording is the owner of any copyright subsisting in the recording by virtue of this Part.

(3) Where —

(a) a person makes, for valuable consideration, an agreement with another person for the making of a sound recording by the other person; and

(b) the recording is made in pursuance of the agreement,
the first-mentioned person is, in the absence of any agreement to the contrary,
the owner of any copyright subsisting in the recording by virtue of this Part.

[Aust. 1968, s. 97]

Ownership of copyright in cinematograph films

98. —(1) This section shall have effect subject to Part X.

(2) Subject to subsection (3), the maker of a cinematograph film is the owner of any copyright subsisting in the film by virtue of this Part.

(3) Where —

(a) a person makes, for valuable consideration, an agreement with another person for the making of a cinematograph film by the other person; and

(b) the film is made in pursuance of the agreement,
the first-mentioned person is, in the absence of any agreement to the contrary,
the owner of any copyright subsisting in the film by virtue of this Part.

[Aust. 1968, s. 98]

Ownership of copyright in television broadcasts and sound broadcasts

99. Subject to Part X, a person who is or has been a holder of a broadcasting licence is the owner of any copyright subsisting in a television broadcast or sound broadcast, as the case may be, made by that person.

[15/94]

[Aust. 1968, s. 99]

Ownership of copyright in cable programmes

100. Subject to Part X, a person providing a cable programme service is the owner of any copyright subsisting in a cable programme included in that service.

Ownership of copyright in published editions of works

101. Subject to Part X, the publisher of an edition of a work or works is the owner of any copyright subsisting in the edition by virtue of this Part.

[Aust. 1968, s. 100]

Division 6 — Infringement of Copyright in Subject-Matter other than Works

Interpretation of this Division

102. In this Division, “audio-visual item” means a sound recording, a cinematograph film, a sound broadcast, a television broadcast or a cable programme.

[6/98]

[Aust. 1968, s. 100A]

Infringement by doing acts comprised in copyright

103. —(1) Subject to the provisions of this Act, a copyright subsisting by virtue of this Part is infringed by a person who, not being the owner of the copyright, and without the licence of the owner of the copyright, does in Singapore, or authorises the doing in Singapore of, any act comprised in the copyright.

(2) Sections 104 and 105 shall not affect the generality of subsection (1).

(3) Subsection (1) shall apply in relation to an act done in relation to a sound recording whether the act is done by directly or indirectly making use of a record embodying the recording.

(4) Subsection (1) shall apply in relation to an act done in relation to a television broadcast or a sound broadcast or a cable programme whether the act is done by the reception of the broadcast or programme or by making use of any article or thing in which the visual images and sounds comprised in the broadcast or programme have been embodied.

[Aust. 1968, s. 101]

Infringement by importation for sale or hire

104. A copyright subsisting by virtue of this Part is infringed by a person who, without the licence of the owner of the copyright, imports an article into Singapore for the purpose of —

- (a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;
- (b) distributing the article —
 - (i) for the purpose of trade; or
 - (ii) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or
- (c) by way of trade exhibiting the article in public, where, he knows, or ought reasonably to know, that the making of the article was carried out without the consent of the owner of the copyright.

[Aust. 1968, s. 102]

Infringement by sale and other dealings

105. —(1) A copyright subsisting by virtue of this Part is infringed by a person who, in Singapore, and without the licence of the owner of the copyright —

- (a) sells, lets for hire, or by way of trade offers or exposes for sale or hire, an article; or
- (b) by way of trade exhibits an article in public, where he knows, or ought reasonably to know, that the making of the article constituted an infringement of the copyright or, in the case of an imported article, the making of the article was carried out without the consent of the owner of the copyright.

(2) For the purposes of subsection (1), the distribution of any articles —

- (a) for the purpose of trade; or
- (b) for any other purpose to an extent that affects prejudicially the owner of the copyright concerned,

shall be taken to be the sale of those articles.

[Aust. 1968, s. 103]

Infringing copies made on machines installed in libraries and archives

105A. Where —

- (a) a person makes an infringing copy of, or of part of, an audio-visual item on a machine (including a computer), being a machine installed by or with the approval of the body administering any library or archives on the premises of the

library or archives, or outside those premises for the convenience of persons using the library or archives; and

(b) there is affixed to, or in close proximity to, the machine, in a place readily visible to persons using the machine, a notice of the prescribed dimensions and in accordance with the prescribed form,

neither the body administering the library or archives, nor the officer-in-charge of the library or archives, shall be taken to have authorised the making of the infringing copy by reason only that the copy was made on that machine.

[52/2004]

[Aust. 1968, s. 104B]

Acts done for purposes of judicial proceeding

106. A copyright subsisting by virtue of this Part is not infringed by anything done —

(a) for the purpose of a judicial proceeding or a report of a judicial proceeding;

(b) for the purpose of seeking professional advice from an advocate and solicitor; or

(c) for the purpose of, or in the course of, the giving of professional advice by an advocate and solicitor.

[Aust. 1968, s. 104]

Making of a copy of sound recording for purposes of broadcasting

107. —(1) The copyright in a sound recording is not infringed by the making of a copy of a sound recording solely for the purpose of the broadcasting of the recording.

[6/98]

(2) Subsection (1) shall not apply in relation to a copy of a sound recording if the copy is used for a purpose other than —

(a) the broadcasting of the recording; or

(b) the making of further copies of the sound recording for the purpose of the broadcasting of the recording.

[6/98]

(2A) Notwithstanding subsections (1) and (2), where a sound recording is intended for broadcast or is broadcast, the copyright in the sound recording is not infringed by —

(a) the making of a copy of the sound recording for, or the supply of a copy of the sound recording to, any statutory authority; or

(b) the use of a copy of the sound recording by that statutory authority or any of its authorised officers,

for the purpose of ascertaining whether the intended broadcast complies with, or the broadcast contravenes, the provisions of any written law administered by that statutory authority.

[52/2004]

(3) Subsection (1) shall not apply in relation to a copy of a sound recording where the copy is used for the purpose of the broadcasting by a person who is not the maker of the copy unless the maker has paid to the owner of the copyright in the recording such amount as they agree or, in default of agreement, has given an undertaking in writing to the owner to pay to him such amount as is determined by a Copyright Tribunal, on the application of either of them, to be equitable remuneration to the owner for the making of the copy.

[6/98]

(4) A person who has given an undertaking referred to in subsection (3) shall be liable, when a Copyright Tribunal has determined the amount to which the undertaking relates, to pay that amount to the owner of the copyright in the recording and the owner may recover that amount in a court of competent jurisdiction from the person as a debt due to the owner.

[6/98]

(5) Subsection (1) shall not apply in relation to a copy of a sound recording unless all the copies made in accordance with that subsection are destroyed or are delivered, with the consent of the director of the National Archives, to the National Archives of Singapore —

(a) before the expiration of the period of 6 months or, in the case of a copy made by a non-profit organisation solely for its own broadcast, 2 years, commencing on the day on which any of the copies made in accordance with

that subsection is first used for broadcasting the recording in accordance with that subsection; or

(b) before the expiration of such further period, if any, as is agreed between the maker of the copy and the owner of the copyright in the recording.

[6/98]

[Aust. 1968, s. 107]

Making of copy of sound recording or cinematograph film for purpose of simulcasting

107A. —(1) Where the broadcasting of a sound recording or a cinematograph film would not for any reason constitute an infringement of the copyright in the recording or film, but the making of a copy of the recording or film would, apart from this section, constitute an infringement of the copyright, the copyright is not infringed by the making of a copy of the recording or film if the copy is made solely for the purpose of simulcasting the recording or film in digital form.

[52/2004]

(2) Subsection (1) shall not apply in relation to a copy of a recording or film if the copy is used for a purpose other than —

(a) the simulcasting of the recording or film in circumstances that do not for any reason constitute an infringement of the copyright in the recording or film; or

(b) the making of further copies of the recording or film for the purpose of simulcasting the recording or film in such circumstances.

[52/2004]

(3) Subsection (1) shall not apply in relation to a copy of a recording or film unless all copies of the recording or film made under that subsection are destroyed before the expiration of the prescribed period.

[52/2004]

[Aust. 1968, s. 110C]

Non-subscription digital audio transmissions

107B. Without prejudice to the generality of section 82(3), it is not an infringement of a copyright in a sound recording to make available to the public the sound recording by means of or as part of a digital audio transmission where the transmission —

- (a) is a sound broadcast;
- (b) is not part of an interactive service; and
- (c) is not a subscription transmission.

Digital audio transmissions within business establishment

107C. —(1) It is not an infringement of a copyright in a sound recording to make available to the public the sound recording by means of or as part of a digital audio transmission if —

- (a) the sound recording is made available to the public by such means within the premises of a business establishment;
- (b) the making available to the public of the sound recording by such means causes the sound recording to be heard within the premises or immediate surroundings of the business establishment; and
- (c) the business carried on in the business establishment does not consist primarily of the making available to the public of sound recordings by such means for payment.

[52/2004]

(2) In this section, "premises" includes any land, building structure and conveyance.

[52/2004]

Other non-infringing non-interactive transmissions

107D. It is not an infringement of a copyright in a sound recording to make available to the public the sound recording by means of or as part of a digital audio transmission that is not part of an interactive service, if the person who does so pays the owner of the copyright in the sound recording such amount by way of equitable remuneration in respect of the transmission as may be agreed upon between them or, in default of such an agreement, as may be determined by a Copyright Tribunal on the application of either party.

[52/2004]

[Aust. 1968, s. 108 (1)]

Temporary copy made in course of communication

107E. —(1) Subject to subsection (2), the copyright in an audio- visual item is not

infringed by the making of a temporary or transient copy of the audio-visual item if —

- (a) the copy is made incidentally as part of the technical process of making or receiving a communication; and
- (b) the act of making the communication itself does not constitute an infringement.

[22/2005]

(2) Subsection (1) shall not apply to the making of a temporary or transient copy of an audio-visual item if the copy of the audio-visual item that is communicated —

- (a) is an infringing copy of the audio-visual item; or
- (b) is a copy that, if it had been made in Singapore, would have been an infringing copy of the audio-visual item.

[22/2005]

(3) Nothing in subsection (1) shall be construed as authorising any subsequent use of the temporary or transient copy of the audio-visual item.

[22/2005]

[Aust. 1968, s. 111A]

Provisions relating to cinematograph films

108. —(1) Where the visual images forming part of a cinematograph film consist wholly or principally of images that, at the time when they were first embodied in an article or thing, were means of communicating news, the copyright in the film is not infringed by the causing of the film to be seen or heard, or to be both seen and heard, in public after the expiration of 50 years after the expiration of the calendar year in which the principal events depicted in the film occurred.

(2) Where the sounds that are embodied in a sound-track associated with the visual images forming part of a cinematograph film are also embodied in a record, other than such a sound-track or a record derived directly or indirectly from such a sound-track, the copyright in the cinematograph film is not infringed by any use made of that record.

[Aust. 1968, s. 110]

Fair dealing in relation to other subject-matter

109. —(1) Subject to this section, a fair dealing with an audio-visual item for any purpose other than a purpose referred to in section 110 or 111 shall not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item.

[52/2004]

(2) The purposes for which a dealing with an audio-visual item may constitute a fair dealing under subsection (1) shall include research and study.

[52/2004]

(3) For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with an audio-visual item, being a dealing by way of copying the whole or a part of the audio-visual item, constitutes a fair dealing with the audio-visual item for any purpose other than a purpose referred to in section 110 or 111 shall include —

- (a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;
- (b) the nature of the audio-visual item;
- (c) the amount and substantiality of the part copied taken in relation to the whole audio-visual item;
- (d) the effect of the dealing upon the potential market for, or value of, the audio-visual item; and
- (e) the possibility of obtaining the audio-visual item within a reasonable time at an ordinary commercial price.

[52/2004]

Fair dealing for purpose of criticism or review

110. A fair dealing with an audio-visual item shall not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of criticism or review, whether of the first-mentioned audio-visual item, another audio-visual item or a work, and a sufficient acknowledgment of the first-mentioned audio-visual item is made.

[Aust. 1968, s. 41]

Fair dealing for purpose of reporting news

111. A fair dealing with an audio-visual item shall not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if —

- (a) it is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgment of the first-mentioned audio-visual item is made; or
- (b) it is for the purpose of, or is associated with, the reporting of news by means of broadcasting or a cable programme service, by any other means of communication to the public, or in a cinematograph film.

[52/2004]

[Aust. 1968, s. 42]

Copying of unpublished sound recordings and cinematograph films in libraries or archives

112. Where, at a time more than 50 years after the time at which, or the expiration of the period during which, a sound recording or cinematograph film was made, copyright subsists in the sound recording or cinematograph film but —

- (a) the sound recording or cinematograph film has not been published; and
 - (b) a record embodying the sound recording, or a copy of the cinematograph film, is kept in the collection of a library or archives where it is, subject to any regulations governing that collection, accessible to the public,
- the copyright in the sound recording or cinematograph film and in any work or other subject-matter included in the sound recording or cinematograph film is not infringed —
- (i) by the making of a copy, or the communication, of the sound recording or cinematograph film by a person for the purpose of research or study or with a view to publication; or
 - (ii) by the making of a copy, or the communication, of the sound recording or cinematograph film by or on behalf of the officer-in-charge of the library or archives, if the copy or the recording or film is supplied (whether by communication or otherwise) to a person who satisfies the officer that he

requires the copy or the recording or film for the purpose of research or study or with a view to publication and that he will not use it for any other purpose.

[52/2004]

[Aust. 1968, s. 51]

Copying of sound recordings and cinematograph films for preservation and other purposes

113. —(1) Subject to subsection (3), where a copy of a sound recording, being a sound recording that forms, or formed, part of the collection of a library or archives, is made by or on behalf of the officer-in-charge of the library or archives —

(a) if the sound recording is held in the collection in the form of a first record — for the purpose of preserving the record against loss or deterioration or for the purpose of research that is being, or is to be, carried out at the library or archives in which the record is held or at another library or archives;

(b) if the sound recording is held in the collection in a published form but has been damaged or has deteriorated — for the purpose of replacing the sound recording; or

(c) if the sound recording has been held in the collection in a published form but has been lost or stolen — for the purpose of replacing the sound recording, the making of the copy does not infringe copyright in the sound recording or in any work or other subject-matter included in the sound recording.

(2) Subject to subsection (3), where a copy of a cinematograph film, being a cinematograph film that forms, or formed, part of the collection of a library or archives, is made by or on behalf of the officer-in-charge of the library or archives —

(a) if the cinematograph film is held in the collection in the form of a first copy — for the purpose of preserving the copy against loss or deterioration or for the purpose of research that is being, or is to be, carried out at the library or archives in which the copy is held or at another library or archives;

(b) if the cinematograph film is held in the collection in a published form but has been damaged or has deteriorated — for the purpose of replacing the cinematograph film; or

(c) if the cinematograph film has been held in the collection in a published form but has been lost or stolen — for the purpose of replacing the cinematograph film,

the making of the copy does not infringe copyright in the cinematograph film or in any work or other subject-matter included in the cinematograph film.

(3) Subsection (1) does not apply in relation to a sound recording, and subsection (2) does not apply in relation to a cinematograph film, held in a published form in the collection of a library or archives unless an authorised officer of the library or archives has, after reasonable investigation, made a declaration stating that he or she is satisfied that a copy (not being a secondhand copy) of the sound recording or cinematograph film, as the case may be, cannot be obtained within a reasonable time at an ordinary commercial price.

(4) Where a copy of an unpublished sound recording or an unpublished cinematograph film is made under subsection (1) or (2) by or on behalf of the officer-in-charge of a library or archives for the purpose of research that is being, or is to be, carried out at another library or archives, the supply of the copy by or on behalf of the officer to the other library or archives does not, for any purpose of this Act, constitute the publication of the sound recording or cinematograph film or of any work or other subject-matter included in the sound recording or cinematograph film.

[Aust. 1968, s. 110B]

Filming or recording broadcasts or programmes for private and domestic use

114. —(1) The copyright in a television broadcast or a cable programme, or in a literary, artistic, dramatic or musical work or a cinematograph film included in the broadcast or programme, insofar as it consists of visual images, is not infringed by the making of a cinematograph film of the broadcast or the cable programme for the private and domestic use of the person by whom the cinematograph film is made.

(2) The copyright in a sound broadcast, a television broadcast or a cable programme, or in a literary, dramatic or musical work, a sound recording or a cinematograph film included in the broadcast or programme, insofar as it consists of sounds, is not infringed by the making of a sound recording of the broadcast

or the cable programme for the private and domestic use of the person by whom the sound recording is made.

(3) For the purposes of this section, a cinematograph film or a sound recording shall be deemed to be made otherwise than for the private and domestic use of the person by whom it is made if it is made for the purpose of —

- (a) the sale or letting for hire of the film or the sound recording, as the case may be;
- (b) broadcasting the film or recording or including it in a cable programme; or
- (c) causing the film or recording to be seen or heard in public.

[Aust. 1968, s. 111]

Use of broadcasts for educational purposes

115. The making of a record of a sound broadcast or a cinematograph film of a television broadcast or of a cable programme does not constitute an infringement of copyright in a work or sound recording or cinematograph film included in the broadcast or programme, or an infringement of copyright in the broadcast or programme, if —

- (a) the record or cinematograph film is made by, or on behalf of, the person or authority in charge of an educational institution; and
- (b) the record or cinematograph film is not used except in the course of instruction at that institution.

[Aust. 1968, s. 200]

Copying for course of instruction in making of film or sound-track

115A. Copyright in a sound recording, cinematograph film, television broadcast, sound broadcast or cable programme is not infringed by its being copied in the making of —

- (a) a cinematograph film; or
- (b) a sound-track associated with the visual images forming part of a cinematograph film,

in the course of instruction, or preparation for instruction, in the making of a cinematograph film or sound-track associated with the visual images forming part of a cinematograph film, if the copying is done by a person giving or receiving such instruction.

[6/98]

Things done for purposes of examination

115B. A copyright subsisting by virtue of this Part is not infringed by anything done for the purposes of an examination, whether by way of setting the questions, communicating the questions to the candidates or answering the questions.

[6/98]

Reproductions of editions of work

116. The copyright in a published edition of a work or works is not infringed by the making of a reproduction of the whole or a part of that edition if that reproduction is made in the course of —

(a) where the edition contains one work only —

(i) a dealing with that work, being a dealing that does not, by virtue of section 35, 36, 37, 38 or 40, infringe copyright in that work; or

(ii) the making of a copy (including a handicapped reader's copy or an intellectually handicapped reader's copy) of the whole or a part of that work, being a copy the making of which does not, by virtue of section 45, 46, 48, 51, 52, 54 or 54A, infringe copyright in that work; or

(b) where the edition contains more than one work —

(i) a dealing with one of those works or dealings with some or all of those works, being a dealing that does not, or dealings that do not, by virtue of section 35, 36, 37, 38 or 40, infringe copyright in that work or those works; or

(ii) the making of a copy (including a handicapped reader's copy or an intellectually handicapped reader's copy) of the whole or a part of one of those works or the making of copies (including the handicapped reader's copies or the intellectually handicapped reader's copies) of the whole or parts of some or all of those works, being a copy the making of which does not, or copies the making of which do not, by virtue of section 45, 46, 48, 51, 52, 54 or 54A, infringe copyright in that work or in those works.

[6/98]

[Aust. 1968, s. 112]

Accessories to imported articles

116A. —(1) The copyright in —

- (a) a published edition of a work embodied in an accessory to an article; or
 - (b) a sound recording or cinematograph film that is an accessory to an article,
- is not infringed by a person who, without the licence of the owner of the copyright, imports the article into Singapore for a purpose mentioned in section 104 (a), (b) or (c) unless the article is an infringing copy.

[14/94]

(2) The operation of this Act in relation to —

- (a) a published edition of a work embodied in an article; or
- (b) a sound recording or cinematograph film,

is not affected by the operation of this section in relation to —

- (i) a published edition of a work, or other subject-matter, embodied in an accessory to the article; or
- (ii) a sound recording or cinematograph film that is an accessory to the article.

[14/94]

(3) If an article is imported into Singapore for a purpose mentioned in section 104 (a), (b) or (c), and the importation is not, by reason of this section, an infringement of the copyright in —

- (a) a published edition of a work embodied in an accessory to the article;
 - (b) a sound recording or cinematograph film that is an accessory to the article,
- the use of the accessory with the article for any such purpose shall not be an infringement of the copyright in the published edition of a work, or in the sound recording or cinematograph film, and section 105 (1) shall not apply to the accessory.

[14/94]

[Aust. 1968, s. 10AD]

Division 7 — Miscellaneous

Copyrights to subsist independently

117. —(1) Where copyright subsists in any subject-matter by virtue of this Part, nothing in this Part shall be taken to affect the operation of Part III in relation to

any literary, dramatic, musical or artistic work from which that subject-matter is wholly or partly derived, and any copyright subsisting by virtue of this Part is in addition to, and independent of, any copyright subsisting by virtue of Part III.

[38/99]

(2) The subsistence of copyright under any provision of this Part shall not affect the operation of any other provision of this Part under which copyright can subsist.

[Aust. 1968, s. 113]

PART V

REMEDIES FOR INFRINGEMENTS OF COPYRIGHT

Division 1 — Preliminary

Interpretation of this Part

118. —(1) In this Part, “action” means a proceeding of a civil nature between parties, and includes a counterclaim.

(2) In the application of this Part in relation to a counterclaim, references to the plaintiff and to the defendant shall be read as references to the defendant and to the plaintiff, respectively.

[Aust. 1968, s. 114]

Division 2 — Actions by Owner of Copyright

Actions for infringement

119. —(1) Subject to the provisions of this Act, the owner of a copyright may bring an action for an infringement of the copyright.

(2) Subject to the provisions of this Act, in an action for an infringement of copyright, the types of relief that the court may grant include the following:

- (a) an injunction (subject to such terms, if any, as the court thinks fit);
- (b) damages;
- (c) an account of profits;

(d) where the plaintiff has elected for an award of statutory damages in lieu of damages or an account of profits, statutory damages of —

(i) not more than \$10,000 for each work or subject-matter in respect of which the copyright has been infringed; but

(ii) not more than \$200,000 in the aggregate, unless the plaintiff proves that his actual loss from such infringement exceeds \$200,000.

[52/2004]

(2A) When the court awards any damages under subsection (2) (*b*), the court may also make an order under subsection (2) (*c*) for an account of any profits attributable to the infringement that have not been taken into account in computing the damages.

[52/2004]

(2B) Except as provided for in subsection (2A), the types of relief referred to in subsection (2) (*b*), (*c*) and (*d*) are mutually exclusive.

[52/2004]

(2C) For the purposes of subsection (2) (*d*), all the parts of a collective work constitute one work.

[52/2004]

(3) Where, in an action for infringement of copyright, it is established that an infringement was committed but it is also established that, at the time of the infringement, the defendant was not aware, and had no reasonable grounds for suspecting, that the act constituting the infringement was an infringement of the copyright, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

(4) Where, in an action under this section —

(a) an infringement of copyright is established; and

(b) the court is satisfied that it is proper to do so, having regard to —

(i) the flagrancy of the infringement;

(ii) any benefit shown to have accrued to the defendant by reason of the infringement; and

(iii) all other relevant matters,
the court may, in assessing damages for the infringement under subsection (2) (b), award such additional damages as it considers appropriate in the circumstances.

[52/2004]

(5) In awarding statutory damages under subsection (2) (d), the court shall have regard to —

- (a) the nature and purpose of the infringing act, including whether the infringing act was of a commercial nature or otherwise;
- (b) the flagrancy of the infringement;
- (c) whether the defendant acted in bad faith;
- (d) any loss that the plaintiff has suffered or is likely to suffer by reason of the infringement;
- (e) any benefit shown to have accrued to the defendant by reason of the infringement;
- (f) the conduct of the parties before and during the proceedings;
- (g) the need to deter other similar infringements; and
- (h) all other relevant matters.

[52/2004]

(6) In this section —

"collective work" means a work in which relevant materials, constituting separate and independent works in themselves, are assembled into a collective whole;

"relevant material" has the same meaning as in section 7A (3).

[52/2004]

[Aust. 1968, s. 115]

Order for delivery up of infringing copies, etc.

120. —(1) Subject to the provisions of this Act, the court may, in addition to any relief granted under section 119 in any action for an infringement of copyright brought under that section, order any infringing copy, or any article which has been used for making infringing copies, in the possession of the defendant or before the court to be delivered up to the plaintiff.

[6/98;38/99;52/2004]

(2) No order shall be made under this section unless the court also makes, or it appears to the court that there are grounds for making, an order under section 120A.

[6/98]

(3) A person to whom an infringing copy or other object is delivered up pursuant to an order made under this section shall, if an order under section 120A is not made, retain the copy or object pending the making of an order, or the decision not to make an order, under section 120A.

[6/98]

[Aust. 1968, s. 133 (4)]

Order for disposal of infringing copies, etc.

120A. —(1) An application may be made to the court for an order that an infringing copy or other object delivered up pursuant to an order made under section 120 be —

- (a) forfeited to the plaintiff; or
- (b) destroyed or otherwise dealt with as the court thinks fit.

[6/98]

(2) In considering what order, if any, should be made under this section, the court shall have regard to —

- (a) whether other remedies available in an action for infringement of copyright would be adequate to compensate the plaintiff and to protect the interests of the plaintiff; and
- (b) the need to ensure that no infringing copy is disposed of in a manner that would adversely affect the plaintiff.

[6/98]

(3) The court shall issue directions as to the service of notice on persons having an interest in the copy or other object.

[6/98]

(4) Any person having an interest in the copy or other object is entitled —

- (a) to appear in proceedings for an order under this section, whether or not that person is served with notice; and

(b) to appeal against any order made, whether or not that person appears in the proceedings.

[6/98]

(5) An order made under this section shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

[6/98]

(6) Where there is more than one person interested in a copy or other object, the court may direct that the copy or object be sold, or otherwise dealt with, and the proceeds divided, and shall make any other order as it thinks just.

[6/98]

(7) If the court decides that no order should be made under this section, the person in whose possession the copy or other object was before being delivered up shall be entitled to its return, and the court may order the defendant to pay to the plaintiff such damages as the court thinks just and equitable.

[6/98]

Division 3 — Proceedings where Copyright is subject to Exclusive Licence

Interpretation of this Division

121. In this Division —

"if the licence had been an assignment" means if, instead of the licence, there had been granted (subject to conditions corresponding as nearly as practicable with those subject to which the licence was granted) an assignment of the copyright in respect of its application to the doing, at the places and times authorised by the licence, of the acts so authorised;

"the other party" means —

- (a) in relation to the owner of the copyright — the exclusive licensee; and
- (b) in relation to the exclusive licensee — the owner of the copyright.

[Aust. 1968, s. 117]

Application

122. This Division shall apply to proceedings in relation to a copyright in respect of which an exclusive licence has been granted and is in force at the time of the events to which the proceedings relate.

[Aust. 1968, s. 118]

Rights of exclusive licensee

123. Subject to this Division, the exclusive licensee shall, except against the owner of the copyright, have the same rights of action as the owner of the copyright would have, and be entitled to the same remedies as he would be entitled to, by virtue of sections 119, 120 and 120A if the licence had been an assignment, and those rights and remedies are concurrent with the rights and remedies of the owner of the copyright under those sections.

[38/99]

[Aust. 1968, s. 119]

Joinder of owner or exclusive licensee as party

124. Where —

(a) an action is brought by the owner of the copyright or by the exclusive licensee; and

(b) the action, insofar as it is brought under section 119, relates, in whole or in part, to an infringement in respect of which the owner and the licensee have concurrent rights of action under that section,

the owner or licensee, as the case may be, shall be entitled to proceed with the action without joining the other party as a plaintiff or adding the other party as a defendant in the action, unless the court orders otherwise.

[52/2004]

[Aust. 1968, s. 120 (1)]

Defences available against exclusive licensee

125. In an action brought by the exclusive licensee by virtue of this Division, a defence under this Act that would have been available to a defendant in the action if the action had been brought by the owner of the copyright shall be available to that defendant as against the exclusive licensee.

[Aust. 1968, s. 121]

Assessment of damages where exclusive licence granted

126. Where an action to which section 124 applies is brought and the owner of the copyright and the exclusive licensee are not both plaintiffs in the action, the court, in assessing damages or statutory damages in respect of an infringement of a kind referred to in that section, shall —

(a) if the plaintiff is the exclusive licensee — take into account any liabilities, in respect of royalties or otherwise, to which the licence is subject; and

(b) whether the plaintiff is the owner of the copyright or the exclusive licensee — take into account any pecuniary remedy already awarded to the other party under section 119 in respect of that infringement, or any right of action exercisable by the other party under that section in respect of that infringement, as the case requires.

[52/2004]

[Aust. 1968, s. 122]

Apportionment of profits between owner and exclusive licensee

127. Where —

(a) an action, insofar as it is brought under section 119, relates, in whole or in part, to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section; and

(b) in that action, whether the owner of the copyright and the exclusive licensee are both parties or not, an account of profits is directed to be taken in respect of that infringement,

then, subject to any agreement of which the court is aware by which the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the court shall apportion the profits between them in such a manner as the court considers just and shall give such directions as the court considers appropriate for giving effect to that apportionment.

[Aust. 1968, s. 123]

Separate actions in relation to the same infringement

128. In an action brought by the owner of the copyright or by the exclusive licensee —

(a) a judgment or order for the payment of damages or statutory damages in respect of an infringement of copyright shall not be given or made under section 119 if a final judgment or order has been given or made in favour of the other party directing an account of profits under that section in respect of the same infringement; and

(b) a judgment or order for an account of profits in respect of an infringement of copyright shall not be given or made under that section if a final judgment or order has been given or made in favour of the other party awarding damages or statutory damages or directing an account of profits under that section in respect of the same infringement.

[52/2004]

[Aust. 1968, s. 124]

Liability for costs

129. Where, in an action to which section 124 applies, whether brought by the owner of the copyright or by the exclusive licensee, the other party is not joined as a plaintiff (either at the commencement of the action or at a later time), but is added as a defendant, the other party is not liable for any costs in the action unless he enters an appearance and takes part in the proceedings.

[Aust. 1968, s. 125]

Division 4 — Proof of Facts in Copyright Proceedings

Presumptions as to subsistence and ownership of copyright

130. —(1) In an action brought by virtue of this Part —

(a) copyright shall be presumed to subsist in the work or other subject-matter to which the action relates if the defendant does not put in issue the question whether copyright subsists in the work or other subject-matter; and

(b) where the subsistence of the copyright is established — the plaintiff shall be presumed to be the owner of the copyright if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership.

(1A) Where the defendant puts in issue the question of whether copyright subsists in the work or other subject-matter or whether the plaintiff is the owner of the copyright, but does not satisfy the court that he does so in good faith, the

presumption as to the subsistence or ownership of copyright under subsection (1) (a) or (b), as the case may be, shall apply notwithstanding that the defendant puts that question in issue.

[52/2004]

(1B) Where the defendant, in good faith, puts in issue the question of whether copyright subsists in the work or other subject-matter or whether the plaintiff is the owner of the copyright, an affidavit made on behalf of the plaintiff in which the plaintiff makes assertions of facts relevant to showing —

(a) that copyright subsists in the work or other subject-matter; and

(b) that he is the owner of the copyright,

shall be admitted in evidence and shall be prima facie proof of the matters stated therein until the contrary is proved, unless the court directs that oral evidence be adduced to prove those matters.

[52/2004]

(2) Where a defendant, without good faith, puts in issue the questions of whether copyright subsists in a work or other subject-matter to which the action relates, or the ownership of copyright in such work or subject-matter, thereby occasioning unnecessary costs or delay in the proceedings, the court may direct that any costs to the defendant in respect of the action shall not be allowed to him and that any costs occasioned by the defendant to other parties shall be paid by him to such other parties.

[Aust. 1968, s. 126]

Presumptions in relation to authorship of work

131. —(1) Where a name purporting to be that of the author of a literary, dramatic, musical or artistic work appeared on copies of the work as published or a name purporting to be that of the author of an artistic work appeared on the work when it was made, the person whose name so appeared, if it was his true name or a name by which he was commonly known, shall, in an action brought by virtue of this Part, be presumed, unless the contrary is established, to be the author of the work and to have made the work in circumstances to which section 30 (4), (5) and (6) does not apply.

(2) Where a work is alleged to be a work of joint authorship, subsection (1) shall apply in relation to each person alleged to be one of the authors of the work as if references in that subsection to the author were references to one of the authors.

(3) Where, in an action brought by virtue of this Part in relation to a photograph

(a) it is established that, at the time when the photograph was taken, a person was the owner of the material on which the photograph was taken or, if the ownership of that material as at that time is not established, that a person was the owner of the apparatus by which the photograph was taken; or

(b) neither the ownership as at the time when the photograph was taken of the material on which it was taken nor the ownership as at that time of the apparatus by which it was taken is established but it is established that, at the time of the death of a person, the photograph was owned by the person or, if the ownership of the photograph as at that time is not established, was in the possession or custody of the person,

the person shall be presumed, unless the contrary is established, to have been the person who took the photograph.

[Aust. 1968, s. 127]

Presumptions in relation to publisher of work

132. Where, in an action brought by virtue of this Part in relation to a literary, dramatic, musical or artistic work, section 131 does not apply, but it is established

(a) that the work was first published in Singapore and was so published during the period of 70 years that ended immediately before the commencement of the calendar year in which the action was brought; and

(b) that a name purporting to be that of the publisher appeared on copies of the work as first published,

then, unless the contrary is established, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication.

[21/2004]

[Aust. 1968, s. 128]

Presumptions where author has died

133. —(1) Where, in an action brought by virtue of this Part in relation to a literary, dramatic, musical or artistic work, it is established that the author is dead —

(a) the work shall be presumed to be an original work unless the contrary is established; and

(b) if it is alleged by the plaintiff that a publication specified in the allegation was the first publication of the work, and that it took place in a country and on a date so specified, that publication shall be presumed, unless the contrary is established, to have been the first publication of the work, and to have taken place in that country and on that date.

(2) Where —

(a) a literary, dramatic, musical or artistic work has been published;

(b) the publication was anonymous or is alleged by the plaintiff to have been pseudonymous; and

(c) it is not established that the work has ever been published under the true name of the author, or under a name by which he was commonly known, or that the identity of the author is generally known or can be ascertained by reasonable inquiry,

subsection (1) (a) and (b) shall apply, in an action brought by virtue of this Part in relation to the work, in like manner as that subsection shall apply where it is established that the author is dead.

[Aust. 1968, s. 129]

Evidence in relation to proceedings

134. In an action brought by virtue of this Part in relation to copyright in a sound recording, if records embodying the recording as supplied to the public bear a label or other mark stating —

(a) that a person specified on the label or mark was the owner of copyright in the recording;

(b) that the recording was first published in a specified year; or

(c) that the recording was first published in a specified country,

the label or mark shall be sufficient evidence of the facts so stated except insofar as the contrary is established.

[6/98]

[Aust. 1968, s. 130]

Presumptions in relation to maker of film

135. Where the name of a person appeared on copies of a cinematograph film as made available to the public in such a way as to imply that the person was the maker of the film and, in the case of a person other than a body corporate, that name was his true name or a name by which he was commonly known, that person shall, in an action brought by virtue of this Part, be presumed, unless the contrary is established, to be the maker of the film and to have made the film in circumstances to which section 98 (3) does not apply.

[Aust. 1968, s. 131]

Division 5 — Offences

Offences

136. —(1) A person who at a time when copyright subsists in a work —

- (a) makes for sale or hire;
- (b) sells or lets for hire, or by way of trade offers or exposes for sale or hire; or
- (c) by way of trade exhibits in public,

any article which he knows, or ought reasonably to know, to be an infringing copy of the work shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 for the article or for each article in respect of which the offence was committed or \$100,000, whichever is the lower, or to imprisonment for a term not exceeding 5 years or to both.

[6/98]

(2) A person who at a time when copyright subsists in a work has in his possession or imports into Singapore any article which he knows, or ought reasonably to know, to be an infringing copy of the work for the purpose of —

- (a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;

(b) distributing the article for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or
(c) by way of trade exhibiting the article in public,
shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 for the article or for each article in respect of which the offence was committed or \$100,000, whichever is the lower, or to imprisonment for a term not exceeding 5 years or to both.

[6/98]

(3) Any person who, at a time when copyright subsists in a work, distributes, either —

(a) for purposes of trade; or

(b) for other purposes, but to such an extent as to affect prejudicially the owner of the copyright,

articles which he knows, or ought reasonably to know, to be infringing copies of the work, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.

(3A) Where, at any time when copyright subsists in a work —

(a) a person does any act that constitutes an infringement of the copyright in a work other than an act referred to in subsection (1), (2), (3) or (6);

(b) the infringement of the copyright in the work by the person is wilful; and

(c) either or both of the following apply:

(i) the extent of the infringement is significant;

(ii) the person does the act to obtain a commercial advantage,

the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent offence, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.

[52/2004]

(4) A person who, at a time when copyright subsists in a work, makes or has in his possession an article specifically designed or adapted for making copies of

the work that the person knows, or ought reasonably to know, is to be used for making infringing copies of the work, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 for each such article in respect of which the offence is committed or to imprisonment for a term not exceeding 2 years or to both.

[6/98]

(5) Subsections (1) to (4) shall apply in relation to copyright subsisting in any subject-matter by virtue of Part IV in like manner as they apply in relation to copyright subsisting in a work by virtue of Part III.

(6) Any person who for his private profit causes a literary, dramatic or musical work to be performed in public, or causes a cinematograph film to be seen or heard or seen and heard in public, other than by the reception of a television broadcast or cable programme, where he knows, or ought reasonably to know, that copyright subsists in the work or cinematograph film and that the performance constitutes an infringement of the copyright, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

(6A) For the purposes of subsection (3A) (c) (i), in determining whether the extent of the infringement is significant, the court shall have regard to —

- (a) the volume of any articles that are infringing copies;
- (b) the value of any articles that are infringing copies;
- (c) whether the infringement has a substantial prejudicial impact on the owner of the copyright; and
- (d) all other relevant matters.

[52/2004]

(6B) For the purposes of subsection (3A) (c) (ii), a person does an act for the purpose of obtaining a commercial advantage if the act is done to obtain a direct advantage, benefit or financial gain for a business or trade carried on by him.

[52/2004]

(7) For the purposes of this section (other than subsection (3A)), any person who has in his possession 5 or more infringing copies of any work or other subject-matter shall, unless the contrary is proved, be presumed —

(a) to be in possession of such copies otherwise than for private and domestic use; or

(b) to be in possession of such copies for the purpose of sale.

[52/2004]

(8) The court before which a person is charged with an offence by reason of a contravention of any of the provisions of this section may, whether he is convicted of the offence or not, order that any article that appears to the court to be an infringing copy or any article which has been used for making infringing copies in the possession of the alleged offender or before the court, be destroyed or delivered up to the owner of the copyright concerned or otherwise dealt with in such manner as the court thinks fit.

[6/98;38/99;52/2004]

(9) If information is given upon oath to a court that there is reasonable cause for suspecting that there is in any premises any article or document which is evidence that an offence under subsection (1), (2), (3), (3A) or (4) has been committed, the court may issue, either unconditionally or subject to such conditions as the court thinks fit, a warrant authorising a police officer to enter and search the premises for the articles and documents which are specified in the warrant, whether specifically or in any general category, and to seize any such articles and documents found at the premises.

[52/2004]

(10) If an article was seized under subsection (9) and —

(a) in proceedings brought under this section, no order is made under subsection (8) as to the article; or

(b) no such proceedings are instituted within 6 months of the seizure, the article shall be returned to the person in whose possession it was when it was seized or, if it is not reasonably practicable to return it to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities.

[6/98]

(11) If a document was seized under subsection (9) and no proceedings under this section are instituted within 6 months of the seizure, the document and all

copies of the document shall be returned to the person in whose possession the document was when it was seized or, if it is not reasonably practicable to return the document and copies to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities.

[6/98]

(12) In this section —

"document" means anything in which information of any description is recorded;

"premises" includes any land, building, structure and conveyance.

[6/98]

[Aust. 1968, s. 132]

Affidavit evidence

137. —(1) An affidavit made before a notary public by or on behalf of the owner of the copyright in any work or other subject-matter and stating —

(a) that at the time specified therein, copyright subsisted in the work or other subject-matter;

(b) that he or the person named therein is the owner of the copyright; and

(c) that the copy of the work or other subject-matter annexed thereto is a true copy thereof,

shall be admitted in evidence in any proceedings for an offence under this Part and shall be prima facie proof of the matters stated therein until the contrary is proved.

(2) The court before which such affidavit is produced shall presume that the affidavit was made by or on behalf of the owner of the copyright.

(3) If an accused to any proceedings for an offence under this Part desires in good faith that the person who made an affidavit referred to in subsection (1) be cross-examined with respect to the matters in the affidavit, the affidavit may not be used in the proceedings unless the person appears as a witness for such cross-examination or the court before which the proceedings are being conducted, in its discretion, permits the affidavit to be used without the person so appearing.

[Aust. 1968, s. 134A]

Powers of police officer

138. —(1) Any police officer may arrest without warrant any person who, in any street or public place —

(a) sells or exposes or offers for sale; or

(b) has, or is reasonably suspected of having, in his possession for the purpose of selling or letting for hire,

any infringing copy of any work or other subject-matter.

(2) Any authorised officer may, without a warrant issued under section 136 (9) —

(a) stop, search and board, whether forcibly or otherwise, any conveyance in which he reasonably suspects that there is any infringing copy of any work or other subject-matter; and

(b) seize, remove or detain any such infringing copy and anything which appears to him —

(i) to be or to contain; or

(ii) to be likely to be or to contain,
evidence of an offence under this Act.

[52/2004]

(3) In this section, "authorised officer" means —

(a) a police officer;

(b) an officer of customs as defined in the Customs Act (Cap. 70);

(c) an immigration officer as defined in the Immigration Act (Cap. 133); or

(d) any officer or class or description of officers appointed by the Minister, by notification in the *Gazette*, to exercise the powers and perform the duties conferred and imposed on an authorised officer by this section.

[52/2004]

Advertisement for supply of infringing copies of computer programs

139. —(1) Any person who, by any means, publishes, or causes to be published, in Singapore an advertisement for the supply in Singapore (whether from within or outside Singapore) of a copy of a computer program which is an infringing copy shall, unless he proves that he acted in good faith and had no reasonable grounds for supposing that copyright would or might thereby be infringed, be

guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) For the purposes of this section, a transmission of a computer program that, when received and recorded, will result in the creation of a copy of the computer program shall be deemed to constitute the supply of a copy of the computer program at the place where the copy will be created.

[Aust. 1968, s. 133A (as amended by Aust. Am. 1984, s. 6 and Aust. Am. 1986, s. 17)]

Court for trial of offences

140. Notwithstanding the provisions of any written law to the contrary, a District Court or Magistrate's Court shall have jurisdiction to try any offence under this Act and award the full punishment for such offence.

Division 6 — Border Enforcement Measures

Interpretation of this Division and Division 7

140A. In this Division and Division 7, unless the context otherwise requires —
"aircraft" has the same meaning as in the Regulation of Imports and Exports Act (Cap. 272A);

"authorised officer" means —

- (a) an officer of customs as defined in section 3 of the Customs Act (Cap. 70); or
- (b) any officer or class or description of officers appointed by the Minister by notification in the *Gazette* to exercise the powers and perform the duties conferred and imposed on an authorised officer by this Division and Division 7;

"copyright material" means —

- (a) a work;
- (b) a sound recording;
- (c) a cinematograph film;
- (d) a published edition of a work; or
- (e) a television or a sound broadcast as recorded in a cinematograph film or a sound recording;

"Director-General" means the Director-General of Customs appointed under section 4 (1) of the Customs Act;

"goods in transit" means goods imported, whether or not landed or transhipped within Singapore, which are to be carried to another country either by the same or another conveyance;

"master" has the same meaning as in the Regulation of Imports and Exports Act (Cap. 272A);

"objector" , in relation to particular seized copies, means the person who gave the notice under section 140B (1) as a result of the giving of which the copies were seized;

"owner" , in relation to the copyright in copyright material, includes an exclusive licensee of the copyright in the material;

"pilot of an aircraft" has the same meaning as in the Regulation of Imports and Exports Act;

"seized copies" means copies seized under section 140B (7);

"senior authorised officer" means —

- (a) a senior officer of customs as defined in section 3 of the Customs Act; and
- (b) any officer or class or description of officers appointed by the Minister by notification in the *Gazette* to exercise the powers and perform the duties conferred and imposed on a senior authorised officer by Division 7;

"vehicle" has the same meaning as in the Regulation of Imports and Exports Act (Cap. 272A);

"vessel" has the same meaning as in the Regulation of Imports and Exports Act.

[6/98; 4/2003]

[Aust. 1968, s. 134B]

Restriction of importation of copies of works, etc.

140B. —(1) A person who is the owner of the copyright in any copyright material or a licensee thereof may give the Director-General a written notice —

(a) stating that he is —

- (i) the owner of the copyright in the copyright material; or
- (ii) a licensee thereof having the power to give such a notice;

(b) stating that copies of the copyright material which are infringing copies are expected to be imported;

(c) providing sufficient information —

- (i) to identify the copies of the copyright material;
- (ii) to enable the Director-General to ascertain the time when and place where the copies are expected to be imported; and
- (iii) to satisfy the Director-General that the copies are infringing copies; and
- (d) stating that he objects to such importation.

[52/2004]

(2) A notice given under subsection (1) shall be supported by such documents and information as may be prescribed in regulations.

[6/98]

(3) Subject to subsection (4), this section shall apply to copies of copyright material made wholly or partly outside Singapore the making of which was carried out without the consent of the owner of the copyright.

[6/98]

(4) This section shall not apply to copies of copyright material which are goods in transit.

[6/98]

(5) Unless it is revoked under subsection (6), a notice under subsection (1) shall remain in force until —

- (a) the end of the period of 60 days commencing on the day on which the notice was given; or
 - (b) the end of the period for which the copyright in the copyright material to which the notice relates is to subsist,
- whichever is the earlier.

[6/98]

(6) A notice under subsection (1) may be revoked by written notice given to the Director-General by the person who gave the first-mentioned notice or by a subsequent owner of the copyright in the copyright material to which the notice relates.

[6/98]

(7) If —

- (a) a notice has been given under this section in respect of copyright material;
- (b) the notice has not lapsed or been revoked; and

(c) a person imports copies of the copyright material to which this section applies for the purpose of —

- (i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the copies;
 - (ii) distributing the copies for the purpose of trade;
 - (iii) distributing the copies for any other purpose to an extent that will affect prejudicially the owner of the copyright in the copyright material; or
 - (iv) by way of trade exhibiting the copies in public,
- an authorised officer may seize the copies.

[6/98]

(8) The Minister may make regulations to provide for —

- (a) the forms of notices under this section;
- (b) the times at which, and the manner in which, notices are to be given; and
- (c) the giving of information and evidence to the Director-General.

[6/98]

[Aust. 1968, s. 135]

Security for liability or expense of seizure

140C. An authorised officer may refuse to seize copies under section 140B (7) unless —

- (a) the objector has deposited with the Director-General a sum of money that, in the opinion of the Director-General, is sufficient to reimburse the Government for any liability or expense it is likely to incur as a result of the seizure of the copies and pay such compensation as may be ordered by the court under section 140I (7) or 140IA (2); or
- (b) the objector has given security, to the satisfaction of the Director-General, for the reimbursement of the Government for any such liability or expense.

[6/98;38/99]

[Aust. 1968, s. 135AA]

Secure storage of seized copies

140D. Seized copies shall be taken to such secure place as the Director-General directs.

[6/98]

[Aust. 1968, s. 135AB]

Notice of seizure

140E. —(1) As soon as is practicable after copies are seized under section 140B (7), the Director-General shall give to the importer and the objector, either personally or by post, a written notice identifying the copies and stating that the identified copies have been seized.

[6/98]

(2) A notice under subsection (1) shall state that the copies will be released to the importer unless —

- (a) an action for infringement of copyright in respect of the copies is instituted by the objector within a specified period from the day specified in the notice; and
- (b) the objector gives written notice to the Director-General within that period stating that the action for infringement of copyright has been instituted.

[6/98]

(3) The period to be specified for the purposes of paragraph (a) of subsection (2) is the period prescribed for the purposes of that paragraph.

[6/98]

(4) The day specified for the purposes of subsection (2) (a) shall not be earlier than the day on which the notice is given.

[6/98]

(5) The objector may, by written notice given to the Director-General before the end of the period specified in a notice for the purposes of subsection (2) (a) (the retention period), request that the period be extended.

[6/98]

(6) Subject to subsection (7), if —

- (a) a request is made in accordance with subsection (5); and
 - (b) the Director-General is satisfied that it is reasonable that the request be granted,
- the Director-General may extend the retention period by such period as is prescribed.

[6/98]

(7) A decision on a request made in accordance with subsection (5) shall be made within 2 working days after the request is made, but such a decision cannot be made after the end of the retention period to which the request relates.

[6/98]

[Aust. 1968, s. 135AC]

Inspection, release, etc., of seized copies

140F. —(1) The Director-General may permit the objector or the importer to inspect the seized copies.

[6/98]

(2) If the objector gives the Director-General the requisite undertakings, the Director-General may permit the objector to remove one sample of the seized copies from the custody of the Director-General for inspection by the objector.

[6/98]

(3) If the importer gives the Director-General the requisite undertakings, the Director-General may permit the importer to remove one sample of the seized copies from the custody of the Director-General for inspection by the importer.

[6/98]

(4) The requisite undertakings are undertakings in writing that the person giving the undertaking will —

(a) return the sample copy to the Director-General at a specified time that is satisfactory to the Director-General; and

(b) take reasonable care to prevent damage to the sample copy.

[6/98]

(5) If the Director-General permits inspection of the seized copies, or the removal of a sample copy, by the objector in accordance with this section, the Director-General is not liable to the importer for any loss or damage suffered by the importer arising out of —

(a) damage to any of the seized copies incurred during that inspection; or

(b) anything done by the objector or any other person to, or in relation to, a sample copy removed from the custody of the Director-General or any use made by the objector of such a sample copy.

[6/98]

[Aust. 1968, s. 135AD]

Forfeiture of seized copies by consent

140G. —(1) Subject to subsection (2), the importer may, by written notice to the Director-General, consent to the seized copies being forfeited to the Government.

[6/98]

(2) The notice shall be given before any action for infringement of copyright in relation to the copies is instituted.

[6/98]

(3) If the importer gives such a notice, the copies are forfeited to the Government and shall be disposed of —

(a) in the manner prescribed by the regulations; or

(b) if no manner of disposal is so prescribed, as the Director-General directs.

[6/98]

[Aust. 1968, s. 135AE]

Compulsory release of seized copies to importer

140H. —(1) The Director-General shall release seized copies (not being copies forfeited to the Government under section 140G) to the importer on the expiration of the retention period for the copies if the objector has not, before the expiration of that period —

(a) instituted an action for infringement of the relevant copyright in respect of the copies; and

(b) given written notice to the Director-General stating that the action has been instituted.

[6/98]

(2) For the purpose of subsection (1), the retention period for seized copies is —

(a) the period specified in a notice given under section 140E in respect of the copies; or

(b) if that period has been extended under section 140E, that period as so extended.

[6/98]

(3) If —

(a) an action for infringement of copyright has been instituted in respect of seized copies; and
(b) at the end of the period of 3 weeks commencing on the day on which the action was instituted, there is not in force an order of the court in which the action was instituted preventing the release of the copies,
the Director-General shall release the copies to the importer.

[6/98]

(4) If the objector gives written notice to the Director-General stating that he consents to the release of the seized copies, the Director-General shall release the copies to the importer.

[6/98]

(5) This section shall have effect subject to section 140J.

[6/98]

[Aust. 1968, s. 135AF]

Provision relating to actions for infringement of copyright

140I. —(1) In this section and section 140IA, "infringement action" means an action for an infringement of copyright constituted by the importation of seized copies.

[6/98;38/99]

(2) The court in which an infringement action is pending may, on the application of a person having a sufficient interest in the subject-matter of the action, allow the person to be joined as a defendant to the action.

[6/98]

(3) An authorised officer is entitled to be heard on the hearing of an infringement action.

[6/98]

(4) In addition to any relief that may be granted apart from this section, the court may —

- (a) at any time, order that the seized copies be released to the importer subject to such conditions, if any, as the court thinks fit;
- (b) order that the seized copies not be released to the importer before the end of a specified period; or

(c) order that the goods be forfeited to the Government.

[6/98]

(5) A court may not make an order under subsection (4) (a) if it is satisfied that the Government or any statutory authority is required or permitted under any other law to retain control of the seized copies.

[6/98]

(6) The Director-General shall comply with an order made under subsection (4).

[6/98]

(7) If —

(a) the action is dismissed or discontinued, or the court decides that the relevant copyright was not infringed by the importation of the seized copies; and

(b) a defendant to the infringement action satisfies the court that he has suffered loss or damage as a result of the seizure of the copies,
the court may order the objector to pay compensation in such amount as the court thinks fit to that defendant.

[6/98;38/99]

[Aust. 1968, s. 135AG]

Compensation for failure to take action

140IA. —(1) Where copies have been seized pursuant to a notice given under section 140B and the objector concerned fails to take infringement action within the retention period for the copies, a person aggrieved by such seizure may apply to the court for an order of compensation against the objector.

[38/99]

(2) Where the court is satisfied that the applicant had suffered loss or damage as a result of the seizure of the copies, the court may order the objector to pay compensation in such amount as the court thinks fit to the applicant.

[38/99]

(3) For the purposes of subsection (1), the retention period for seized copies is —

(a) the period specified in a notice given under section 140E in respect of the copies; and

(b) if that period has been extended under section 140E, that period as so extended.

[38/99]

[Aust. 1968, s. 135AG (7)]

Retention of control of seized copies

140J. Notwithstanding section 140H, in a case in which no order has been made under section 140I (4) in relation to seized copies, the Director-General is not obliged to release or dispose of the copies if the Government is required or permitted, under any other law, to retain control of the copies.

[6/98]

[Aust. 1968, s. 135AH]

Disposal of seized copies ordered to be forfeited

140K. If a court orders that seized copies are to be forfeited to the Government, the copies shall be disposed of —

- (a) in the manner prescribed by the regulations; or
- (b) if no manner of disposal is so prescribed, as the Director-General directs.

[6/98]

[Aust. 1968, s. 135AI]

Insufficient security

140L. —(1) If the reasonable expenses incurred by the Director-General in relation to any action taken by the Director-General under this Division, or taken in accordance with an order of a court under this Division exceed the amount deposited, or the amount of the security given, under section 140C, the amount of the excess is a debt due to the Government.

[6/98]

- (2) The debt created by subsection (1) is due by the objector, or, if there are 2 or more objectors, by the objectors jointly and severally.

[6/98]

[Aust. 1968, s. 135AJ]

Detention of infringing copies

140LA. —(1) Notwithstanding section 140B (4), any authorised officer may —

- (a) detain any copies of copyright material —
 - (i) that are imported into, or that are to be exported from, Singapore; and

(ii) that are not goods in transit, unless the copies are consigned to any person with a commercial or physical presence in Singapore; or
(b) examine any copies of copyright material, including goods in transit, which he reasonably suspects are infringing copies of any copyright material.

[52/2004]

(2) As soon as practicable after the copies of copyright material are detained under subsection (1) (a), the Director-General shall give —

(a) to the importer, exporter or consignee, as the case may be, of the detained copies; and

(b) to the owner of the copyright in the copyright material, a written notice identifying the copies, stating that they have been detained and setting out the matters referred to in subsection (3).

[52/2004]

(3) The detained copies of copyright material shall be released to the importer, exporter or consignee, as the case may be, of the copies, unless, within the prescribed period, the owner of the copyright in the copyright material —

(a) in the case of copies that are imported into Singapore and that are not goods in transit —

(i) gives the Director-General the written notice referred to in section 140B (1);

(ii) submits to the Director-General the documents and information referred to in section 140B (2); and

(iii) deposits with the Director-General the sum of money referred to in section 140C (a) or gives the security referred to in section 140C (b); or

(b) in the case of copies that are to be exported from Singapore or copies that are goods in transit and consigned to a person with a commercial or physical presence in Singapore —

(i) institutes an action for the infringement of his copyright;

(ii) serves on the Director-General an order of the court authorising the further detention of the copies; and

(iii) deposits with the Director-General a sum of money that, in the opinion of the Director-General, is sufficient to —

(A) reimburse the Government for any liability or expense it has and is likely to further incur as a result of the detention of the copies; and
(B) pay such compensation to any person who suffers loss or damage as a result of the detention of the copies as may be ordered by the court, or gives security, to the satisfaction of the Director-General, for the reimbursement of the Government for any such liability or expense and the payment of such compensation.

[52/2004]

(4) Every order of the court authorising the further detention of copies under subsection (3) (b) (ii) shall be subject to the condition that the owner of the copyright in the copyright material complies with subsection (3) (b) (iii) within the period prescribed under subsection (3).

[52/2004]

(5) Where the court has made an order authorising the further detention of copies under subsection (3) (b) (ii) —

(a) the detained copies shall be taken to such secure place as the Director-General directs; and

(b) sections 140F and 140G and 140I to 140L shall apply, with the necessary modifications, to the further detention of the copies, and for the purposes of such application —

(i) any reference to the objector shall be read as a reference to the owner of the copyright in the copyright material;

(ii) any reference to the importer shall be read as a reference to the exporter or consignee, as the case may be, of the detained copies;

(iii) any reference to the seized copies shall be read as a reference to the detained copies;

(iv) any reference to the seizure of copies shall be read as a reference to the detention or further detention of the copies;

(v) any reference to the import or importation of copies shall be read —

(A) in the case of copies that are to be exported from Singapore, as a reference to the export of the copies; or

(B) in the case of copies that are goods in transit and that are consigned to a person with a presence in Singapore, as a reference to the import, importation or export, of the copies by the consignee;

(vi) any reference to infringement action shall be read as a reference to an action for the infringement of the copyright in the copyright material under subsection (3) (b) (i); and

(vii) any reference to the retention period shall be read as a reference to the prescribed period under subsection (3).

[52/2004]

Division 7 — Powers of Search

Powers of search in relation to vessels, aircrafts and vehicles

140M. —(1) A senior authorised officer or an authorised officer acting in accordance with the general or special directions of a senior authorised officer may board any conveyance in Singapore and may rummage and search all parts of the conveyance for copies of copyright material liable to be seized under section 140B (7) or detained under section 140LA.

[6/98;52/2004]

(2) For the more effective exercise of the powers conferred by this section, a senior authorised officer may do all or any of the following:

(a) require the master of any vessel in Singapore to heave to;

(b) by direction to the master of any vessel or the pilot of any aircraft in Singapore, require the vessel or aircraft, as the case may be, not to proceed until so authorised;

(c) require any documents which ought to be on board any vessel or aircraft, being documents relating to any goods therein, to be brought to him for inspection;

(d) break open and forcibly enter any place or receptacle in any conveyance to which he cannot otherwise reasonably obtain access;

(e) by direction to the master of any vessel in Singapore, require the vessel to proceed to any specified anchorage, wharf or place to which the vessel may lawfully go;

- (f) by direction to the master of any vessel in Singapore, require him to move or discharge any cargo or other goods therein;
- (g) require the person in charge of a vehicle —
 - (i) to stop and not to proceed until so authorised; or
 - (ii) to bring the vehicle to any police station or examination station;
- (h) direct that the removal of any goods from or placed in any vessel be prohibited until so authorised;
- (i) require the master of any vessel or the pilot of any aircraft to produce a complete manifest of the whole cargo of the vessel or aircraft and a complete list of stores carried by that vessel or aircraft.

[6/98]

(3) An authorised officer may exercise, in respect of any vehicle or any vessel not exceeding 75 tons net tonnage, the powers which are conferred upon a senior authorised officer by subsection (2) other than the powers conferred by paragraph (d) of that subsection.

[6/98]

(4) It shall be presumed in any proceedings arising out of any thing done under this section, unless the contrary is proved, that any authorised officer, not being a senior authorised officer, by whom the thing was done was acting in accordance with the general or special direction of a senior authorised officer.

[6/98]

(5) If any vessel or aircraft fails to comply with any lawful requisition or direction given or made under this section, a senior authorised officer may take all such steps as appear to him necessary to secure such compliance.

[6/98]

(6) Any person who contravenes this section or who fails to comply with any lawful requisition or direction given or made thereunder shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$6,000 or to imprisonment for a term not exceeding 12 months or to both.

[6/98]

(7) An authorised officer may exercise the powers conferred by this section in respect of a vessel under way if he reasonably suspects that it is not in transit through Singapore.

[6/98]

Examination of packages

140N. —(1) Any goods, package, box, chest or other article which is being or has recently been imported and in regard to which a reasonable suspicion exists that it is or that it contains a copy of copyright material liable to be seized under section 140B (7) or detained under section 140LA may be —

- (a) examined and searched by an authorised officer or detained until any person in charge thereof has opened it for examination and search;
- (b) subjected to such tests or analysis as the authorised officer thinks fit;
- (c) forcibly opened by, or by order of, a senior authorised officer to facilitate the examination and search except that any person in charge of the package, box, chest or other article shall be afforded every reasonable facility for being present at the opening, examination and search; or
- (d) marked, locked, sealed or otherwise secured by an authorised officer pending examination and search.

[6/98;52/2004]

(2) Any person, other than an authorised officer, who removes, opens, breaks or tampers with any mark, lock, seal or other means of securing any goods, package, box, chest or other article referred to in subsection (1) (d) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$6,000 or to imprisonment for a term not exceeding 6 months or to both.

[6/98]

Power to remove packages and goods to police station or examination station

140O. —(1) For the more convenient exercise of the powers conferred by section 140N, an authorised officer may remove any package, box, chest or other article or any goods to a police station or examination station or may require it to be so removed by the owner thereof or his agent or any person having the custody, charge or control thereof.

[6/98]

(2) Any person who fails to comply with any such requisition shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$6,000.

[6/98]

(3) Upon the failure by a person to comply with such a requisition, an authorised officer may remove the goods in the manner provided by subsection (1) and all the expenses of such removal (as certified by a senior authorised officer) shall be recoverable as a fine from that person or from the owner of the goods.

[6/98]

Search of persons and baggage

140P. —(1) Any person landing or being about to land or having recently landed from any vessel or aircraft, or leaving any vessel or aircraft in Singapore whether for the purpose of landing or otherwise, or entering or having recently entered Singapore by land, sea or air, shall —

(a) on demand by an authorised officer, either permit his person and goods and baggage to be searched by the officer for any copy of copyright material liable to be seized under section 140B (7) or detained under section 140LA or, together with the goods and baggage, accompany the officer to a police station or an examination station, and there permit his person and goods and baggage to be searched in the presence and under the supervision of a senior authorised officer for any copy of copyright material liable to be seized under section 140B (7) or detained under section 140LA; or

(b) on demand by a senior authorised officer, permit his person and goods and baggage to be searched by the officer, or in the presence and under the supervision of the officer, for any copy of copyright material liable to be seized under section 140B (7) or detained under section 140LA.

[6/98;52/2004]

(2) Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman and with strict regard to decency.

[6/98]

(3) The goods and baggage of any person who requests to be present when they are searched shall not be searched except in his presence, unless he fails to be present after being given reasonable facility for being present.

[6/98]

(4) Any person who refuses to comply with any lawful demand made under this section may be arrested without warrant by the authorised officer making the demand.

[6/98]

Powers of authorised officers to enter certain premises

140Q. —(1) For the purpose of exercising the powers conferred by sections 140M to 140P, an authorised officer may, without warrant, enter upon any islet, landing place, wharf, dock, railway or quay or the premises of a provider of port services or facilities licensed or exempted under the Maritime and Port Authority of Singapore Act (Cap. 170A), or of the Civil Aviation Authority of Singapore.

[6/98]

(2) In this section, "railway" has the same meaning as in the Railways Act (Cap. 263).

[6/98]

Obstruction

141. Any person who —

(a) refuses any authorised officer or senior authorised officer access to any vessel, aircraft, vehicle or place which the officer is entitled under this Division; or
(b) obstructs or hinders any authorised officer or senior authorised officer in the execution of any power conferred upon that officer by this Division,
shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 12 months or to both.

[6/98]

Division 8 — Miscellaneous

Limitation of actions in respect of infringement of copyright

142. An action shall not be brought for an infringement of copyright, after the expiration of 6 years from the time when the infringement took place.

[Aust. 1968, s. 134]

PART VI

COMPULSORY LICENCES FOR TRANSLATION AND REPRODUCTION OF CERTAIN WORKS

Interpretation of this Part

143. (*Repealed by Act 21 of 2004*)

Licence to produce and publish translations

144. (*Repealed by Act 21 of 2004*)

Licence to reproduce and publish works for certain purposes

145. (*Repealed by Act 21 of 2004*)

Licence for domestic broadcasting organisation

146. (*Repealed by Act 21 of 2004*)

Termination of licences granted under this Part

147. (*Repealed by Act 21 of 2004*)

Discontinuation of this Part

148. (*Repealed by Act 21 of 2004*)

PART VII

COPYRIGHT TRIBUNALS

Division 1 — Preliminary

Interpretation of this Part

149. —(1) In this Part, unless the context otherwise requires —

"deputy president" means a deputy president of the Tribunals appointed by the Minister under section 151A(1)(b);

"licence" means a licence granted by or on behalf of the owner or prospective owner of the copyright in a work or other subject-matter to do an act comprised in the copyright;

"licence scheme" means a scheme (including anything in the nature of a scheme, whether called a scheme or tariff or called by any other name) formulated by a licensor and setting out the classes of cases in which the licensor is willing to grant licences and the charges (if any) subject to payment of which, and the conditions subject to which, licences would be granted in those classes of cases;

"licensor" means any association, body or organisation (whether incorporated or unincorporated) which —

(a) carries on the business of negotiating, granting or otherwise collectively administering licences in relation to a repertoire of works or other subject-matter by different authors, makers or publishers who are not affiliated with that association, body or organisation within the meaning of subsection (3); and

(b) negotiates, grants or otherwise collectively administers such licences either as the owner or prospective owner of the copyrights in such works or other subject-matter or as the agent or representative of the owners or prospective owners of the copyrights in such works or other subject-matter;

"member" means a member of a Tribunal and includes the president or deputy president presiding over the Tribunal;

"order" includes an interim order;

"organisation" means an organisation or association of persons whether corporate or unincorporate;

"panel" means the panel appointed by the Minister under section 151A(4);

"party" includes a person or an organisation making representations to a Tribunal at an inquiry under section 157;

"president" means the president of the Tribunals appointed by the Minister under section 151A(1)(a);

"proceeding" , in relation to a Tribunal, includes an inquiry by the Tribunal under section 157.

(2) In this Part —

- (a) a reference to conditions is a reference to any conditions other than conditions relating to the payment of a charge;
- (b) a reference to giving an opportunity to a person or organisation of presenting a case is a reference to giving the person or organisation an opportunity, at the option of the person or organisation, of submitting representations in writing, or of being heard, or of submitting representations in writing and being heard;
- (c) a reference to a person who requires a licence of a particular kind includes a reference to a person who holds a licence of that kind if the person will, at the expiration of the period for which the licence was granted, require a renewal of that licence or a grant of a further licence of the same kind; and
- (d) a reference to proceedings for infringement of copyright includes a reference to proceedings brought in respect of an alleged contravention of section 136 (6).
[Aust. 1968, s. 136]

(3) For the purpose of the definition of "licensor" in subsection (1), the author, maker or publisher of any work or other subject-matter is affiliated with the association, body or organisation which carries on the business of negotiating, granting or otherwise collectively administering licences in relation to that work or other subject-matter if such author, maker or publisher produced or published that work or other subject-matter in the course of his employment with, or under a commission from —

- (a) that association, body or organisation; or
- (b) any other association, body or organisation which is related, in such manner as may be prescribed, to the first-mentioned association, body or organisation.

Cases to which licence schemes apply

150. —(1) For the purposes of this Part, a case shall, subject to subsection (2), be deemed to be a case to which a licence scheme applies if, in accordance with a licence scheme for the time being in operation, a licence would be granted in that case.

(2) For the purposes of this Part, where, in accordance with a licence scheme —

- (a) the licences that would be granted would be subject to conditions by virtue of which particular matters would be excepted from the licences; and
- (b) a case relates to one or more matters falling within such an exception,

that case shall be deemed not to be a case to which the scheme applies.

[Aust. 1968, s. 137]

Division 2 — Constitution of Tribunal

Establishment of Tribunals

151. —(1) There shall be established one or more Copyright Tribunals for the purposes of this Part.

(2) Subject to subsection (3), each Tribunal shall be constituted by —

(a) the president or a deputy president designated by the president, who shall preside over the Tribunal; and

(b) 2 other members selected by the president from amongst the members of the panel.

(3) Notwithstanding subsection (2), the president or a deputy president presiding over a Tribunal may preside alone at any preliminary hearing of an application or a reference to deal with any matter connected with the application or reference.

Appointment of president, deputy president and members of Tribunal

151A. —(1) The Minister shall appoint —

(a) the president of the Tribunals; and

(b) not more than 2 deputy presidents of the Tribunals.

(2) No person shall be appointed as the president of the Tribunals unless he possesses the qualifications required for a District Judge under section 9(3) of the Subordinate Courts Act (Cap. 321).

(3) No person shall be appointed as a deputy president of the Tribunals unless he is a qualified person (as defined in section 2 of the Legal Profession Act (Cap. 161)) of not less than 5 years' standing.

(4) For the purpose of enabling a Tribunal to be constituted under this Part, the Minister shall appoint a panel consisting of not more than 15 persons with such qualifications as he may consider necessary and shall publish their names in the *Gazette*.

(5) The Minister may appoint a Secretary to the Tribunals and such other officers and employees of the Tribunals as the Minister may determine.

Remuneration and allowances

151B. —(1) There shall be paid to each member of a Tribunal who is not a public officer such remuneration (whether by way of salaries or fees), and such allowances, as the Minister may determine.

(2) The remuneration and allowances of the members of a Tribunal and such other expenses of a Tribunal as the Minister may determine shall be paid out of moneys provided by Parliament.

(3) The remuneration of the Secretary to the Tribunals and the other officers and employees appointed under section 151A(5) shall be paid out of the funds of the Office.

Tenure of office

152. —(1) Subject to this section, the president, a deputy president and any member of the panel shall hold office for such period as may be determined by the Minister at the time of their respective appointments and shall be eligible for re-appointment upon the expiry of their respective terms of office.

(2) The president, a deputy president or any member of the panel may at any time by notice in writing to the Minister resign his appointment.

(3) The Minister may terminate the appointment of the president, a deputy president or any member of the panel on the ground of his unfitness to continue in office or his incapacity to perform the duties thereof.

Continuation of hearing on change in constitution of Tribunal

153. —(1) If during the course of any proceedings of a Tribunal being presided over by the president —

(a) the president (referred to as the former president) is, by reason of illness, absence or any other cause, unable to perform the duties of his office; and

(b) the Minister appoints a new president to replace him,
the Tribunal shall be reconstituted accordingly and the new president shall preside over it in place of the former president.

(2) If during the course of any proceedings of a Tribunal —

(a) the deputy president who has been designated by the president under section 151(2)(a) to preside over the Tribunal; or

(b) a member of the panel who has been selected by the president under section 151(2)(b) to be a member of the Tribunal,

is, by reason of illness, absence or any other cause, unable to perform the duties of his office in relation to those proceedings, the president may reconstitute the Tribunal by doing any of the following, as the case requires:

(i) preside over the Tribunal in place of the deputy president referred to in paragraph (a);

(ii) designate the other deputy president to preside over the Tribunal;

(iii) select any other member of the panel to replace that member referred to in paragraph (b).

(3) A Tribunal as reconstituted under subsection (1) or (2) —

(a) may hear and determine the proceedings as have not been determined and in so hearing may have regard to the evidence given, the arguments adduced and any interim order made during any previous hearing; and

(b) shall, if requested by all the parties to the proceedings, hear the proceedings afresh.

(4) Notwithstanding subsection (1) or (2), any president, deputy president or member of the panel whose appointment expires during the course of any proceedings of a Tribunal over which he is then presiding or of which is a member shall, for the purpose of such proceedings and until their determination, be deemed to remain a president, deputy president or member of the Tribunal, as the case may be.

Quorum

154. Except in the case of a preliminary hearing of an application or a reference, all 3 members of a Tribunal (as stipulated in section 151(2)) must be present to form a quorum for the purposes of any proceedings before the Tribunal.

Decision of Tribunal

155. If the members of a Tribunal dealing with any reference or application are unable to agree as to the order to be made by the Tribunal, a decision shall be taken by the votes of the majority.

[Aust. 1968, s. 146 (5)]

Sittings of Tribunal

156. —(1) The sittings of a Tribunal on any matter or matters before it, including any preliminary hearing, shall be held at such places and times as are determined by the president or deputy president presiding over the Tribunal.

(2) The exercise of the powers of a Tribunal shall not be affected by a vacancy or vacancies in the membership of the Tribunal.

[Aust. 1968, s. 146 (1) and (7)]

Division 3 — Inquiries by, and Applications and References to, Tribunal

Application to Tribunal for determination of remuneration payable for making recording or film of a work

156A. —(1) This section shall apply where an application is made to a Tribunal under section 43 (3) or 68 (3) for the determination of an equitable remuneration to be paid to the owner of the copyright in a work for the making of a sound recording or cinematograph film of the work or of an adaptation of the work.

[6/98]

(2) The parties to an application in relation to which this section applies are —

(a) the owner of the copyright in the work; and

(b) the maker of the recording or film.

[6/98]

(3) Where an application in relation to which this section applies is made to a Tribunal, the Tribunal shall consider the application and, after giving to the parties to the application an opportunity of presenting their cases, shall make an order determining the amount that it considers to be equitable remuneration to the owner of the copyright for the making of the recording or film.

[6/98]

[Aust. 1968, s. 149]

Application to Tribunal for determination of remuneration payable for making copy of sound recording

156B. —(1) This section shall apply where an application is made to a Tribunal under section 107 (3) for the determination of an equitable remuneration to be

paid to the owner of the copyright in a sound recording for the making of a copy of the sound recording.

[6/98]

(2) The parties to an application in relation to which this section applies are —

- (a) the owner of the copyright in the sound recording; and
- (b) the maker of the copy of the sound recording.

[6/98]

(3) Where an application in relation to which this section applies is made to a Tribunal, the Tribunal shall consider the application and, after giving to the parties to the application an opportunity of presenting their cases, shall make an order determining the amount that it considers to be equitable remuneration to the owner of the copyright for the making of the copy of the sound recording.

[6/98]

[Aust. 1968, s. 150]

Application to Tribunal for determination of remuneration payable for making available to public sound recording by means of digital audio transmission

156C. —(1) This section shall apply where an application is made to a Tribunal under section 107D for the determination of equitable remuneration to be paid to the owner of the copyright in a sound recording for the making available to the public of the sound recording by means of or as part of a digital audio transmission that is not part of an interactive service.

[52/2004]

(2) The parties to an application in relation to which this section applies are —

- (a) the owner of the copyright in the sound recording; and
- (b) the person who makes available to the public the sound recording by means of or as part of a digital audio transmission that is not part of an interactive service.

[52/2004]

(3) Where an application in relation to which this section applies is made to a Tribunal, the Tribunal shall consider the application and, after giving to the parties to the application an opportunity of presenting their cases, shall make an

order determining the amount that it considers to be equitable remuneration to the owner of the copyright for the making available to the public of the sound recording by means of or as part of a digital audio transmission that is not part of an interactive service.

[52/2004]

(4) In this section, "interactive service" has the same meaning as in section 81 (1).

[52/2004]

[Aust. 1968, s. 151]

Inquiries into royalty payable in respect of records of musical works

157. —(1) This section shall apply where the Minister charged with the responsibility for trade and industry requests a Tribunal under section 59 to hold an inquiry in relation to the royalty, or the minimum royalty, payable in respect of records generally, or in respect of records included in a particular class of records.

(2) Where such a request is made, the Tribunal shall hold the inquiry and shall give every person or organisation that the Tribunal is satisfied has a substantial interest in the matter to which the inquiry relates an opportunity of presenting a case to the Tribunal.

(3) As soon as practicable after the completion of the inquiry, the Tribunal shall make a report in writing to the Minister setting out the result of the inquiry.

[Aust. 1968-1973, s. 148]

Applications to Tribunal for determination of remuneration payable to owner of copyright for copies made under statutory licence

158. —(1) This section shall apply where application is made to a Tribunal under section 52 (11) or (11C), 54 (10) or 54A (7) for the determination of an equitable remuneration to be paid to the owner of the copyright in a work for the making of copies, of a handicapped reader's copy or of an intellectually handicapped reader's copy, as the case requires, of the whole or of a part of that work.

[6/98;52/2004]

(2) The parties to an application in relation to which this section applies are —

(a) the owner of the copyright in a work; and

(b) the body by which, or on behalf of which, the copies, the handicapped reader's copy or the intellectually handicapped reader's copy referred to in subsection (1) were or was made.

[6/98]

(3) Where an application in relation to which this section applies is made to a Tribunal, the Tribunal shall consider the application and, after giving the parties to the application opportunities of presenting their cases —

(a) shall make an order determining the amount that it considers to be equitable remuneration to the owner of the copyright for the making of the copies or, of the handicapped reader's copy or of the intellectually handicapped reader's copy, as the case requires; and

(b) may, subject to the regulations, make such order as to costs as the Tribunal thinks fit.

[6/98]

(4) Where a Tribunal makes, under subsection (3), an order that one party to an application pay an amount by way of costs to the other party to the application, the first-mentioned party shall pay that amount to the other party and, in default of payment, the first-mentioned party may recover that amount from the other party in a court of competent jurisdiction as a debt due to him.

Applications to Tribunal for apportionment of royalty in respect of a record

159. —(1) This section shall apply where an application is made to a Tribunal under section 60 (3) (b) for an apportionment of an amount payable in respect of a record between the owner of the copyright in a musical work and the owner of the copyright in a literary or dramatic work.

(2) The parties to an application in relation to which this section applies are —

(a) the owner of the copyright in the musical work; and

(b) the owner of the copyright in the literary or dramatic work.

(3) Where an application in relation to which this section applies is made to a Tribunal, the Tribunal shall consider the application and, after giving to the parties to the application an opportunity of presenting their cases, shall make an order apportioning the amount to which the application relates between the parties in such manner as it thinks equitable.

[Aust. 1968, s. 153]

Reference of proposed licence schemes to Tribunal

160. —(1) Where a licensor proposes to bring a licence scheme into operation, he may refer the scheme to a Tribunal.

(2) The parties to a reference under this section are —

(a) the licensor referring the scheme; and

(b) such organisations or persons (if any) as apply to the Tribunal to be made parties to the reference and, in accordance with subsection (3), are made parties to the reference.

(3) Where an organisation (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to a Tribunal to be made a party to a reference, and the Tribunal is satisfied that the organisation or person has a substantial interest in the operation of the scheme to which the reference relates, the Tribunal may, if it thinks fit, make that organisation or person a party to the reference.

(4) A Tribunal shall consider a scheme referred under this section and, after giving to the parties to the reference an opportunity of presenting their cases, shall make such order, either confirming or varying the scheme, or substituting the scheme with such other scheme, as the Tribunal considers reasonable in the circumstances.

(5) An order (other than an interim order) of a Tribunal under this section may, notwithstanding anything in the licence scheme to which it relates, be made so as to be in force either indefinitely or for such period as the Tribunal thinks fit.

(6) Where a licence scheme has been referred to a Tribunal under this section, the licensor may do either or both of the following things:

(a) bring the scheme into operation before the Tribunal makes an order in pursuance of the reference;

(b) withdraw the reference at any time before the Tribunal makes an order in pursuance of the reference, whether the scheme has been brought into operation or not.

(7) If the scheme is not brought into operation before an order is made in pursuance of the reference, the scheme as confirmed, varied or substituted by

the order comes into operation, notwithstanding anything in the scheme, immediately upon the making of the order.

(8) After the making of an order in pursuance of the reference, the scheme as confirmed, varied or substituted by the order shall remain in operation, notwithstanding anything in the scheme, so long as the order remains in force.

[Aust. 1968, s. 154]

Reference of existing licence schemes to Tribunal

161. —(1) Where, at any time while a licence scheme is in operation, a dispute arises with respect to the terms of the scheme between the licensor operating the scheme and —

- (a) an organisation claiming to be representative of persons requiring licences in cases included in a class of cases to which the scheme applies; or
- (b) any person claiming that he requires a licence in a case included in a class of cases to which the scheme applies,

the licensor, organisation or person concerned may refer the scheme to a Tribunal insofar as the scheme relates to cases included in that class.

(2) The parties to a reference under this section are —

- (a) the licensor, organisation or person referring the scheme;
- (b) if the reference is not made by the licensor operating the scheme — that licensor; and
- (c) such other organisations or persons (if any) as apply to the Tribunal to be made parties to the reference and, in accordance with subsection (3), are made parties to the reference.

(3) Where an organisation (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to a Tribunal to be made a party to a reference, and the Tribunal is satisfied that the organisation or person has a substantial interest in the matter in dispute, the Tribunal may, if it thinks fit, make that organisation or person a party to the reference.

(4) A Tribunal shall not begin to consider a reference under this section by an organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons that it claims to represent.

(5) Subject to subsection (4), where a licence scheme is referred to a Tribunal under this section, the Tribunal shall consider the matter in dispute and, after giving to the parties to the reference an opportunity of presenting their cases, shall make such order, either confirming or varying the scheme, or substituting the scheme with such other scheme, insofar as it relates to cases included in the class of cases to which the reference relates, as the Tribunal considers reasonable in the circumstances.

(6) An order (other than an interim order) of a Tribunal under this section may, notwithstanding anything in the licence scheme to which it relates, be made so as to be in force either indefinitely or for such period as the Tribunal thinks fit.

(7) A reference of a licence scheme to a Tribunal under this section may be withdrawn at any time before an order is made in pursuance of the reference.

(8) Where a licence scheme has been referred to a Tribunal under this section, the scheme shall remain in operation, notwithstanding anything in the scheme, until the Tribunal makes an order in pursuance of the reference.

(9) Subsection (8) shall not apply in relation to a reference with respect to any period after the reference has been withdrawn or after the Tribunal has refused to begin to consider the reference in pursuance of subsection (4).

(10) After the making of an order in pursuance of the reference, the scheme as confirmed, varied or substituted by the order shall remain in operation, notwithstanding anything in the scheme, so long as the order remains in force.

[Aust. 1968, s. 155]

Further reference of licence schemes to Tribunal

162. —(1) Where a Tribunal has made an order (other than an interim order) under section 160 or 161 with respect to a licence scheme, then, subject to subsection (2), at any time while the order remains in force —

(a) the licensor operating the scheme;

(b) any organisation claiming to be representative of persons requiring licences in cases included in the class of cases to which the order applies; or

(c) any person claiming that he requires a licence in a case included in that class, may refer the scheme again to a Tribunal insofar as it relates to cases included in that class.

(2) A licence scheme shall not, except with the leave of a Tribunal, be referred again to a Tribunal under subsection (1) at a time earlier than —

(a) where the order concerned was made so as to be in force indefinitely or for a period exceeding 15 months — the expiration of the period of 12 months commencing on the date on which the order was made; or

(b) where the order concerned was made so as to be in force for a period not exceeding 15 months — the commencement of the period of 3 months ending on the date of expiration of the order.

(3) The parties to a reference under this section are —

(a) the licensor, organisation or person referring the scheme;

(b) if the reference is not made by the licensor operating the scheme — that licensor; and

(c) such other organisations or persons (if any) as apply to a Tribunal to be made parties to the reference and, in accordance with the provisions applicable in that behalf by virtue of subsection (5), are made parties to the reference.

(4) Subject to subsection (5), where a licence scheme is referred to a Tribunal under this section, the Tribunal shall consider the matter in dispute and, after giving to the parties to the reference an opportunity of presenting their cases, shall make such order in relation to the scheme as previously confirmed, varied or substituted, insofar as it relates to cases included in the class of cases to which the reference relates, whether by way of confirming, varying or further varying the scheme, or substituting the scheme with such other scheme, as the Tribunal considers reasonable in the circumstances.

(5) Section 161 (3), (4) and (6) to (10) inclusive shall apply for the purposes of this section.

(6) Subsections (1) to (5) shall have effect in relation to orders made under this section in like manner as they have effect in relation to orders made under section 160 or 161.

(7) Nothing in this section shall prevent a licence scheme in respect of which an order has been made under section 160 or 161 from being again referred to a Tribunal under that section —

(a) insofar as the scheme relates to cases included in a class of cases to which the order does not apply — at any time; and

(b) insofar as the scheme relates to cases included in the class of cases to which the order applied while it was in force — after the expiration of the order.

[Aust. 1968, s. 156]

Application to Tribunal in relation to licences

163. —(1) A person who claims, in a case to which a licence scheme applies, that the licensor operating the scheme has refused or failed to grant him a licence in accordance with the scheme, or to procure the grant to him of such a licence, may apply to a Tribunal under this section.

(2) A person who claims, in a case to which a licence scheme applies, that he requires a licence but that the grant of a licence in accordance with the scheme would, in that case, be subject to the payment of charges, or to conditions, that are not reasonable in the circumstances of the case, may apply to a Tribunal under this section.

(3) A person who claims that he requires a licence in a case to which a licence scheme does not apply (including a case where a licence scheme has not been formulated or is not in operation) and —

(a) that a licensor has refused or failed to grant the licence, or to procure the grant of the licence, and that in the circumstances it is unreasonable that the licence should not be granted; or

(b) that a licensor proposes that the licence should be granted subject to the payment of charges, or to conditions, that are unreasonable, may apply to a Tribunal under this section.

(4) An organisation that claims that it is representative of persons requiring licences in cases to which a licence scheme does not apply (including cases where a licence scheme has not been formulated or is not in operation) and —

(a) that a licensor has refused or failed to grant the licences, or to procure the grant of the licences, and that in the circumstances it is unreasonable that the licences should not be granted; or

(b) that a licensor proposes that the licences should be granted subject to the payment of charges, or to conditions, that are unreasonable,

may apply to a Tribunal under this section.

(5) Where an organisation (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to a Tribunal to be made a party to an application under subsection (1), (2), (3) or (4), and the Tribunal is satisfied that the organisation or person has a substantial interest in the matter in dispute, the Tribunal may, if it thinks fit, make that organisation or person a party to the application.

(6) Where an application is made to a Tribunal under subsection (1), (2), (3) or (4), the Tribunal shall give to the applicant, to the licensor concerned and to every other party (if any) to the application an opportunity of presenting their cases and, if the Tribunal is satisfied that the claim of the applicant is well-founded, the Tribunal shall make an order specifying, in respect of the matters specified in the order —

(a) in the case of an application under subsection (1) — the charges, if any, and the conditions, that the Tribunal considers to be applicable in accordance with the licence scheme in relation to the applicant;

(b) in the case of an application under subsection (2) or (3) — the charges, if any, and the conditions, that the Tribunal considers reasonable in the circumstances in relation to the applicant; or

(c) in the case of an application under subsection (4) — the charges, if any, and the conditions, that the Tribunal considers reasonable in the circumstances in relation to persons, or to persons included in classes of persons, specified in the order, being persons who were represented by the applicant or were parties to the application.

(7) A reference in this section to a failure to grant a licence, or to procure the grant of a licence, shall be read as a reference to a failure to grant the licence, or to procure the grant of the licence, as the case may be, within a reasonable time after a request to do so.

[Aust. 1968, s. 157]

Effect of licence schemes being continued in operation pending order of Tribunal

164. —(1) Where a licence scheme is in operation by virtue of this Part pending

the making of an order on a reference under this Part and a person, in a case to which the scheme applies, does anything that, apart from this subsection, would be an infringement of a copyright but would not be such an infringement if he were the holder of a licence granted in accordance with the scheme insofar as the scheme relates to cases to which the reference relates, that person shall, if he has complied with the relevant requirements, be in the like position, in any proceedings for infringement of that copyright, as if he had at the material time been the holder of such a licence.

(2) For the purposes of subsection (1), the relevant requirements are —

(a) that, at all material times, the person concerned has complied with the conditions that, in accordance with the licence scheme, would be applicable to a licence in respect of the case concerned; and

(b) where, in accordance with the scheme, any charges are payable in respect of such a licence — that, at the material time, he had paid those charges to the licensor operating the scheme, or, if at that time the amount payable could not be ascertained, he had given an undertaking in writing to the licensor to pay the charges when ascertained.

(3) A person who does anything in relation to which subsection (1) applies shall be liable to pay to the licensor operating the licence scheme concerned the amount of any charges that would be payable if he were the holder of a licence granted in accordance with the scheme insofar as the scheme relates to the doing of that thing and the licensor may recover that amount in a court of competent jurisdiction from the person as a debt due to the licensor.

[Aust. 1968, s. 158]

Effect of order of Tribunal in relation to licences

165. —(1) Where an order made on a reference under this Part with respect to a licence scheme is for the time being in force and a person, in a case to which the scheme as confirmed or varied by the order applies, does anything that, apart from this subsection, would be an infringement of copyright but would not be such an infringement if he were the holder of a licence granted in accordance with the scheme, as confirmed or varied by the order, insofar as the scheme relates to cases to which the order applies, that person shall, if he has complied

with the relevant requirements, be in the like position, in any proceedings for infringement of that copyright, as if he had at the material time been the holder of such a licence.

(2) For the purposes of subsection (1), the relevant requirements are —

(a) that, at all material times, the person concerned has complied with the conditions that, in accordance with the licence scheme as confirmed or varied by the order, would be applicable to a licence in respect of the case concerned; and
(b) where, in accordance with the scheme as so confirmed or varied, any charges are payable in respect of such a licence — that, at the material time, he had paid those charges to the licensor operating the scheme, or, if at that time the amount payable could not be ascertained, he had given an undertaking in writing to the licensor to pay the charges when ascertained.

(3) A person who does anything in relation to which subsection (1) applies shall be liable to pay to the licensor operating the licence scheme concerned the amount of any charges that would be payable if he were the holder of a licence granted in accordance with the scheme, as confirmed or varied by the order, insofar as the scheme relates to the doing of that thing and the licensor may recover that amount in a court of competent jurisdiction from the person as a debt due to the licensor.

(4) Where a Tribunal has made an order on an application under section 163 (1), (2) or (3) specifying charges, if any, and conditions, in relation to the applicant, in respect of the matters specified in the order, then if —

(a) the applicant has complied with the conditions specified in the order; and
(b) in a case where the order specifies any charges — he has paid those charges to the licensor or, if the amount payable could not be ascertained, has given to the licensor an undertaking in writing to pay the charges when ascertained, the applicant shall be in the like position, in any proceedings for infringement of copyright relating to any of those matters, as if he had at all material times been the holder of a licence granted by the owner of the copyright concerned on the conditions, and subject to payment of the charges (if any), specified in the order.

(5) Where a Tribunal has made an order on an application under section 163 (4) specifying charges (if any) and conditions, in relation to the persons, or to

persons included in the classes of persons, specified in the order, in respect of matters specified in the order, then, if —

(a) any such person has complied with the conditions specified in the order; and
(b) in the case where the order specifies any charges — the person has paid those charges to the licensor or, if the amount payable could not be ascertained, has given to the licensor an undertaking in writing to pay the charges when ascertained,

that person shall be in the like position, in any proceedings for infringement of copyright relating to any of those matters, as if he had at all material times been the holder of a licence granted by the owner of the copyright concerned on the conditions, and subject to payment of the charges (if any), specified in the order.

(6) Where a person in relation to whom an order referred to in subsection (4) or (5) applies does, in relation to any of the matters specified in that order, anything that, apart from that subsection, would be an infringement of copyright but would not be such an infringement if he were the holder of a licence in respect of the doing of that thing granted by the owner of the copyright concerned on the conditions and subject to payment of the charges (if any) specified in the order, that person shall be liable to pay to the owner of the copyright the amount of any charges that would be payable if he were the holder of such a licence.

(7) The owner of the copyright may recover the amount referred to in subsection (6) in a court of competent jurisdiction from the person as a debt due to the owner of the copyright.

[Aust. 1968, s. 159]

Attorney-General may make application for suspension order

166. —(1) Subject to subsection (2), upon application made to it by the Attorney-General, a Tribunal may, in its discretion, make an order suspending the application of section 52 (1) and (2) in relation to the body administering an educational institution, being a body that has been convicted of 2 or more offences against the regulations in relation to the retention of records or declarations relating to copies of the whole or parts of works made in reliance on section 52.

(2) A Tribunal shall not make an order under subsection (1) if it is satisfied that the body in relation to which the order is sought has taken all reasonable steps to ensure that no further contravention of the regulations referred to in subsection (1) will occur in relation to the retention of records or declarations relating to copies made or to be made by or on behalf of the body.

(3) For the purposes of subsection (1), a conviction of the custodian in charge of the copying records of an educational institution for a contravention of the regulations referred to in subsection (1), not being a conviction for a contravention in relation to which the body administering the educational institution has also been convicted, shall be taken to be a conviction of the body administering the educational institution.

(4) The parties to an application under subsection (1) in relation to a body administering an educational institution are —

(a) the Attorney-General; and

(b) that body.

Application to revoke suspension orders

167. —(1) The body administering an educational institution may, at any time, make application to a Tribunal for the revocation of an order under section 166 suspending the application of section 52 (1) in relation to it.

(2) Where a Tribunal is satisfied, upon application made under subsection (1), that the body making the application has taken all reasonable steps to ensure that no further contravention of the regulations referred to in section 166 (1) will occur in relation to the retention of records or declarations relating to copies made or to be made in reliance on section 52, the Tribunal may revoke the order to which the application relates.

(3) The parties to an application under subsection (1) for the revocation of an order made in relation to the body administering an institution are —

(a) that body; and

(b) the Attorney-General.

Interim orders

168. Where an application or reference is made to a Tribunal under this Act, the

Tribunal may make an interim order having effect until the final decision of the Tribunal on the application or reference is given.

[Aust. 1968, s. 160]

Reference of questions of law to High Court

169. —(1) A Tribunal may, of its own motion or at the request of a party, refer a question of law arising in proceedings before it for determination by the High Court.

(2) A question shall not be referred to the High Court by virtue of subsection (1) in pursuance of a request made after the date on which a Tribunal gave its decision in the proceedings unless the request is made before the expiration of 14 days of the Tribunal giving its decision.

(3) If a Tribunal, after giving its decision in any proceedings, refuses a request to refer a question to the High Court, the party by whom the request was made may, within 14 days of the refusal, apply to the High Court for an order directing the Tribunal to refer the question to the High Court.

(4) Where a reference is made to the High Court under this section with respect to any proceedings before a Tribunal, and where an application is made under subsection (3) with respect to any such proceedings, every party to the proceedings before the Tribunal shall be entitled to appear and to be heard.

(5) Where, after a Tribunal has given its decision in any proceedings, the Tribunal refers to the High Court under this section a question of law that arose in the course of the proceedings, and the High Court decides that the question was erroneously determined by the Tribunal —

(a) the Tribunal shall reconsider the matter in dispute and, if it considers it necessary to do so for the purpose of giving effect to the decision of the High Court, shall give to the parties to the proceedings a further opportunity of presenting their cases; and

(b) if it appears to the Tribunal to be appropriate, and in conformity with the decision of the High Court, to do so, the Tribunal shall make such order revoking or modifying any order previously made by it in the proceedings, or, in the case of proceedings under section 163 where the Tribunal refused to make an order,

shall make such order under that section, as the Tribunal considers to be appropriate.

(6) A reference of a question by a Tribunal to the High Court under this section shall be by way of stating a case for the opinion of the High Court; and the decision of the Court on any such reference shall be final.

(7) For the purposes of this section, a question of law shall not include a question whether there is sufficient evidence to justify a finding of fact by a Tribunal.

(8) This section shall not apply in relation to an inquiry by a Tribunal under section 157.

[Aust. 1968, s. 161]

Agreements or awards not affected

170. Nothing in this Part shall affect the operation of any agreement or of any award made by an arbitrator, whether the agreement or award was made before, or is made after, 10th April 1987.

[Aust. 1968, s. 162]

Division 4 — Procedure and Evidence

Proceedings to be in public except in special circumstances

171. —(1) Subject to this section, the hearing of proceedings before a Tribunal shall be in public.

(2) Where a Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Tribunal may —

(a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present; or

(b) give directions prohibiting or restricting the publication of evidence given before the Tribunal (whether in public or in private) or of matters contained in documents produced to the Tribunal.

[Aust. 1968, s. 163]

Application may be made to Tribunal by agent of copyright owner

172. —(1) An owner of copyright may make an application to a Tribunal under this Act by his agent.

(2) Two or more owners of copyright may jointly make a single application to a Tribunal by the same agent against the same person or body.

[Aust. 1968, s. 163A]

Procedure

173. In proceedings before a Tribunal —

(a) the procedure of the Tribunal shall, subject to this Act and the regulations, be within the discretion of the Tribunal;

(b) the Tribunal shall not be bound by the Evidence Act (Cap. 97); and

(c) the proceedings shall be conducted with as little formality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit.

[Aust. 1968, s. 164]

Mistakes or errors in orders of Tribunal

174. A Tribunal may correct any clerical mistake or any error arising from an accidental slip or omission in any order made by it.

Regulations as to procedure

175. —(1) The regulations may make provision for or in relation to the procedure in connection with the making of references and applications to a Tribunal and the regulation of proceedings before a Tribunal and may prescribe the fees payable in respect of those references and applications and the fees and expenses of witnesses in those proceedings.

(2) The regulations may include provision —

(a) for requiring notice of an intended inquiry by a Tribunal under section 157 or an intended reference to a Tribunal under section 160, 161 or 162 to be advertised in accordance with the regulations;

(b) for requiring notice of an intended application to the High Court under section 169 (3) to be given to a Tribunal and to the other parties to the proceedings, and for limiting the time within which any such notice is to be given;

(c) for suspending, or authorising or requiring a Tribunal to suspend, the operation of orders of the Tribunal in cases where, after giving its decision, the Tribunal refers a question of law to the High Court;

- (d) for modifying, in relation to orders of a Tribunal the operation of which is suspended, the operation of any provisions of this Part as to the effect of orders made under this Part;
- (e) for the publication of notices, or the doing of any other things, to ensure that persons affected by the suspension of an order of a Tribunal will be informed of its suspension; and
- (f) for regulating or prescribing any other matters incidental to or consequential upon any request, application, order or decision under section 169.

[Aust. 1968, s. 166]

Power to take evidence on oath

176. —(1) A Tribunal may take evidence on oath or affirmation, and for that purpose a member may administer an oath or affirmation.

(2) A member of a Tribunal may summon a person to appear before the Tribunal to give evidence and to produce such documents and articles (if any) as are referred to in the summons.

[Aust. 1968, s. 167]

Evidence in form of written statement

177. A Tribunal may, if it thinks fit, permit a person appearing as a witness before the Tribunal to give evidence by tendering, and verifying by oath or affirmation, a written statement, which shall be filed with the Secretary to the Tribunals.

[Aust. 1968, s. 168]

Representation

178. In proceedings before a Tribunal —

- (a) a party other than a body corporate or an unincorporated body of persons may appear in person or be represented by an employee of the party approved by the Tribunal;
- (b) a party being a body corporate may be represented by a director or other officer, or by an employee, of the party approved by the Tribunal;
- (c) a party being an unincorporated body of persons or a member of such a body may be represented by a member, or by an officer or employee, of the body approved by the Tribunal; and
- (d) any party may be represented by an advocate and solicitor.

[Aust. 1968, s. 169]

Division 5 — Miscellaneous

Protection of members and witnesses

179. —(1) A member shall have, in the performance of his duty as a member, the same protection and immunity as a Judge of the High Court.

(2) A person summoned to appear before a Tribunal as a witness shall have the same protection, and shall, in addition to the penalties provided by this Act, be subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the High Court.

[Aust. 1968, s. 171]

Disobedience to summons, etc.

180. —(1) A person who has been summoned to appear as a witness before a Tribunal shall not, without lawful excuse, and after tender of reasonable expenses, fail to appear in obedience to the summons.

(2) A person who has been summoned to produce a document or article to a Tribunal shall not, without lawful excuse, and after tender of reasonable expenses, fail to produce the document or article.

(3) A person who appears before a Tribunal shall not, without lawful excuse, refuse to be sworn or to make an affirmation, or to produce documents or articles, or to answer questions, that he is required by the Tribunal to produce or answer.

(4) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months.

[Aust. 1968, s. 172]

Contempt of Tribunal, etc.

181. —(1) A person shall not —

(a) insult or disturb a member in the exercise of his powers or functions as a member;

(b) interrupt the proceedings of a Tribunal;

(c) use insulting language towards a member;

- (d) create a disturbance or take part in creating or continuing a disturbance in or near a place where a Tribunal is sitting;
- (e) contravene or fail to comply with a direction of a Tribunal given under section 171 (2) (b); or
- (f) do any other act or thing that would, if a Tribunal were a court of record, constitute a contempt of that court.

(2) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months.

[Aust. 1968, s. 173]

Cost of proceedings

182. —(1) A Tribunal may order that the costs of any proceedings before it incurred by any party, or a part of those costs, shall be paid by any other party and may tax or settle the amount of the costs to be so paid, or specify the manner in which they are to be taxed.

(2) Costs directed by a Tribunal to be paid to a party may be recovered by that party in any court of competent jurisdiction.

(3) This section shall apply in relation to an inquiry by a Tribunal under section 157.

[Aust. 1968, s. 174]

Proof of orders of Tribunal

183. Without prejudice to any other method available by law for the proof of orders of a Tribunal, a document purporting to be a copy of such an order, and to be certified by the Secretary to the Tribunal to be a true copy of the order, shall be admitted in any proceedings, as evidence of the order.

[Aust. 1968, s. 175]

PART VIII

EXTENSION OR RESTRICTION OF THIS ACT

Application of this Act to countries other than Singapore

184. —(1) The Minister may make regulations applying any of the provisions of

this Act specified in the regulations, in relation to a country so specified, in any one or more of the following ways, so as to secure that those provisions:

- (a) apply in relation to literary, dramatic, musical or artistic works or editions first published, or sound recordings or cinematograph films made or first published, in that country as they apply in relation to literary, dramatic, musical or artistic works or editions first published, or sound recordings or cinematograph films made or first published, in Singapore;
- (b) apply in relation to persons who, at a material time, are citizens or nationals of that country as they apply in relation to persons who, at such a time, are citizens of Singapore;
- (c) apply in relation to persons who, at a material time, are resident in that country as they apply in relation to persons who, at such a time, are resident in Singapore;
- (d) apply in relation to bodies incorporated under the laws of that country as they apply in relation to bodies incorporated under the laws of Singapore;
- (e) apply in relation to television broadcasts and sound broadcasts made from places in that country, by one or more organisations constituted in, or under the laws of, that country, as they apply in relation to television broadcasts and sound broadcasts made from places in Singapore by a broadcasting licensee;
- (f) apply in relation to cable programmes sent from places in that country as they apply in relation to cable programmes sent from places in Singapore.

[14/94;15/94]

(2) Regulations made under subsection (1) —

- (a) may apply the provisions of this Act without exception or modification or applying a provision of this Act in relation to a country other than Singapore in accordance with that subsection subject to exceptions or modifications specified in those regulations;
- (b) may apply the provisions of this Act either generally or in relation to such classes of works or other subject-matter, or other classes of cases, as may be specified in those regulations.

(3) The Minister shall not make regulations under this section applying any of the provisions of this Act in the case of a country, other than a country which is a

party to a Convention relating to copyright to which Singapore is also a party, unless the Minister is satisfied that, in respect of the class of works or other subject-matter to which those provisions relate, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright under this Act.

[Aust. 1968, s. 184]

Provisions as to international organisations

185. —(1) Where it appears to the Minister that it is desirable that this Act should apply in relation to an organisation —

(a) of which 2 or more countries, or the governments of 2 or more countries, are members; or

(b) that is constituted by persons representing 2 or more countries, or representing the governments of 2 or more countries,

the Minister may by regulations declare that organisation to be an international organisation to which this Act applies.

(2) An international organisation to which this Act applies that otherwise does not have, or at some material time otherwise did not have, the legal capacities of a body corporate shall have, and shall be deemed at all material times to have had, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright and for the purposes of all legal proceedings relating to copyright.

(3) Where an original work, or a sound recording or a cinematograph film is made by or under the direction or control of an international organisation to which this Act applies in such circumstances that copyright would not subsist in the work, sound recording or cinematograph film apart from this subsection —

(a) copyright shall subsist in the work, sound recording or cinematograph film;

(b) that copyright shall subsist so long as the work, sound recording or cinematograph film remains unpublished; and

(c) the organisation shall, subject to Part X, be the owner of that copyright.

(4) Where an original work, or a sound recording or a cinematograph film is first published by or under the direction or control of an international organisation to which this Act applies, in such circumstances that, apart from this subsection,

copyright would not subsist in the work, the sound recording or cinematograph film, as the case may be, immediately after the first publication thereof —

(a) copyright shall subsist in the work, sound recording or cinematograph film, or, if copyright in the work, sound recording or cinematograph film subsisted immediately before its first publication, copyright shall continue to subsist in the work, sound recording or cinematograph film;

(b) that copyright shall subsist until the expiration of 70 years after the expiration of the calendar year in which the work, sound recording or cinematograph film, as the case may be, was first published; and

(c) the organisation shall, subject to Part X, be the owner of that copyright.

[21/2004]

(5) Where an edition of a literary, dramatic, musical or artistic work or of 2 or more literary, dramatic, musical or artistic works, other than an edition that reproduces a previous edition of the same work or works, is published by, or under the direction or control of, an international organisation to which this Act applies in such circumstances that copyright would not, apart from this subsection, subsist in the edition immediately after the first publication of the edition —

(a) copyright shall subsist in the edition;

(b) that copyright shall subsist until the expiration of 25 years after the expiration of the calendar year in which the edition was first published; and

(c) the organisation shall, subject to Part X, be the owner of that copyright.

(6) Parts III and IV, other than the provisions of those Parts relating to the subsistence, duration or ownership of copyright, shall apply in relation to copyright subsisting by virtue of this section in like manner as it applies in relation to copyright subsisting by virtue of those Parts.

[Aust. 1968, s. 186]

Denial of copyright to citizens of countries not giving adequate protection to Singapore works

186. —(1) If it appears to the Minister that the law of a country does not give adequate protection to Singapore works, or does not give adequate protection in relation to a class or classes of such works (whether the lack of protection relates

to the nature of the work or the nationality, citizenship or country of residence of its author, or all of those matters), the Minister may by regulations make provision in relation to that country in accordance with subsection (2).

(2) Regulations made for the purposes of this section may provide, either generally or in such classes of cases as are specified in the regulations, that copyright under this Act does not subsist in works first published after a date specified in those regulations (which may be a date before the commencement of those regulations or before 10th April 1987) if, at the time of the first publication of those works, the authors of the works were or are —

(a) citizens or nationals of a country specified in those regulations, not being at that time persons resident in Singapore; or

(b) in the case of works being sound recordings or cinematograph films — bodies incorporated under the law of a country specified in those regulations.

[S 107/87]

(3) In making regulations for the purposes of this section, the Minister shall have regard to the nature and extent of the lack of protection for Singapore works by reason of which the regulations are made.

(4) In this section —

"author" , in relation to a sound recording or a cinematograph film, means the maker of the recording or film;

"Singapore work" means a work the author of which was, at the time when the work was made, a qualified person for the purpose of the relevant provision of this Act;

"the relevant provision of this Act" means —

(a) in relation to a literary, dramatic, musical or artistic work — section 27; and

(b) in relation to a sound recording or a cinematograph film or a cable programme — Part IV;

"work" means a literary, dramatic, musical or artistic work, a sound recording, a cinematograph film, a television broadcast, a sound broadcast or a cable programme.

[6/98]

[Aust. 1968, s. 185]

PART IX

FALSE ATTRIBUTION OF AUTHORSHIP

Interpretation of this Part

187. In this Part, unless the context otherwise requires —

"name" includes initials or a monogram;

"performance", "protection period" and "recording" have the same meanings as in Part XII.

[52/2004]

[Aust. 1968, s. 189]

Duty not to attribute falsely authorship of work or identity of performer of performance

188. —(1) A person (referred to in this subsection as the offender) shall, by virtue of this section, be under a duty to the author of a work or a performer of a performance not to —

(a) insert or affix another person's name in or on the work or a recording of the performance, or in or on a reproduction of the work or recording, in such a way as to imply that the other person is the author of the work or the performer of the performance;

(b) publish, sell or let for hire, by way of trade offer or expose for sale or hire, or by way of trade exhibit in public, the work or recording of the performance with another person's name so inserted or affixed, if the offender knows that the other person is not the author of the work or the performer of the performance;

(c) do any of the acts mentioned in paragraph (b) in relation to, or distribute, reproductions of the work or recording of the performance, being reproductions in or on which another person's name has been so inserted or affixed, if the offender knows that the other person is not the author of the work or the performer of the performance; or

(d) perform in public or communicate the work as being a work of which another person is the author, or make available to the public the recording of a performance as being a recording of a performance of which another person is

the performer, if the offender knows that the other person is not the author of the work or the performer of the performance.

[52/2004]

(2) Subsection (1) shall apply where, contrary to the fact, a work is represented as being an adaptation of the work of another person in like manner as it applies where a work is represented as being the work of another person.

[52/2004]

(3) After the death of the author of a work or the performer of the performance, a person shall, by virtue of this section, be under a duty to the legal personal representative of the author or performer not to do in relation to, or to a reproduction of, the work or an adaptation of the work or a recording of the performance any act that, but for the death of the author or performer, the person would, by reason of either subsection (1) or (2), have been under a duty to the author or performer not to do.

[52/2004]

(4) In this section —

"performance" means a performance in respect of which the protection period under Part XII has not expired;

"work" means a work in which copyright subsists under this Act.

[52/2004]

[Aust. 1968, s. 190]

Duty not to falsely represent altered work or recording of performance as unaltered

189. Where a work in which copyright subsists or a recording of a performance in respect of which the protection period has not expired has been altered by a person other than the author of the work or the performer of the performance, a person shall be under a duty to the author or performer not to —

(a) publish, sell or let for hire, or by way of trade offer or expose for sale or hire, the work or recording as so altered as being the unaltered work of the author or as an unaltered recording of the performance; or

(b) publish, sell or let for hire, or by way of trade offer or expose for sale or hire, a reproduction of the work or a recording of the performance as so altered as

being a reproduction of the unaltered work of the author or an unaltered recording of the performance by the performer,
if, to his knowledge, it is not —

- (i) the unaltered work or a reproduction of the unaltered work, as the case may be, of the author; or
- (ii) the unaltered recording or a reproduction of the unaltered recording, as the case may be, of the performance by the performer.

[52/2004]

[Aust. 1968, s. 191]

Duty not to attribute falsely the authorship of reproduction of artistic work

190. A person shall, by virtue of this section, be under a duty to the author of an artistic work in which copyright subsists not to —

- (a) publish, sell or let for hire, by way of trade offer or expose for sale or hire, or by way of trade exhibit in public, a reproduction of the work, as being a reproduction made by the author of the work; or
- (b) distribute reproductions of the work as being reproductions made by the author of the work,

where the reproduction was, or the reproductions were, to his knowledge, not made by the author.

[Aust. 1968, s. 192]

Breach of duty not committed if act done outside Singapore or done with permission

191. The doing of an act by a person shall not be a breach of a duty owed by that person to another person by virtue of this Part if the act was done outside Singapore or was done with the permission, whether express or implied, of that other person.

[Aust. 1968, s. 193]

Action for breach of duty

192. —(1) Where a person commits a breach of a duty owed by him to another person by virtue of this Part, the breach shall not be enforceable by criminal proceedings but the other person may bring an action in respect of the breach.

(2) The relief that a court may grant in an action under subsection (1) shall include an injunction (subject to such terms, if any, as the court thinks fit) and damages.

(3) Where, in respect of an act done in relation to, or to a reproduction of, a work or an adaptation of a work or a recording of a performance after the death of the author of the work or the performer of the performance, damages are recovered under this section by the legal personal representative of the author or performer, those damages devolve as if they formed part of the estate of the author or performer and as if the right of action in respect of the doing of that act had subsisted, and had been vested in the author or performer, immediately before his death.

[52/2004]

[Aust. 1968-1973, s. 194]

Saving of other rights and remedies

193. —(1) Subject to this section, this Part shall not affect any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than by virtue of this Part.

(2) Any damages recovered in proceedings instituted by virtue of this Part shall be taken into account in assessing damages in proceedings instituted otherwise than by virtue of this Part and arising out of the same operation or transaction.

(3) Any damages recovered in proceedings instituted otherwise than by virtue of this Part shall be taken into account in assessing damages in proceedings instituted by virtue of this Part and arising out of the same operation or transaction.

[Aust. 1968-1973, s. 195]

PART IXA

WORKS, OR OTHER SUBJECT-MATTER, IN ELECTRONIC FORM

Interpretation and effect of application of this Part

193A. —(1) In this Part, unless the context otherwise requires —

"electronic copy" , in relation to any material, means a copy of the material in an electronic form, and includes the original version of the material in that form;

"material" means any work or other subject-matter in which copyright subsists by virtue of this Act;

"monetary relief" means damages, an account of profits or statutory damages;

"network service provider" —

(a) for the purposes of section 193B, means a person who provides services relating to, or provides connections for, the transmission or routing of data; and

(b) for the purposes of this Part (other than section 193B), means a person who provides, or operates facilities for, online services or network access and includes a person referred to in paragraph (a),

but does not include such person or class of persons as the Minister may prescribe;

"primary network" , in relation to a network service provider, refers to a network controlled or operated by or for the network service provider;

"routing" means directing or choosing the means or routes for the transmission of data;

"standard technical measure" means any technical measure accepted in Singapore that —

(a) is used to identify or protect material;

(b) has been developed through an open, voluntary process by a broad consensus of copyright owners and network service providers;

(c) is available to any person on reasonable and non- discriminatory terms; and

(d) does not impose substantial costs on network service providers or substantial burdens on their primary networks.

[52/2004;22/2005]

(2) This Part does not limit the operation of the other provisions of this Act in relation to determining whether copyright has been infringed.

[52/2004]

(3) Nothing in this Part shall be construed as making the applicability of sections 193B, 193C, 193D and 193DB conditional on —

(a) a network service provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with any standard technical measure; or

(b) a network service provider gaining access to, removing or disabling access to any electronic copy of any material in any case in which such conduct is prohibited by law.

[22/2005]

Transmission, routing and provision of connections

193B. —(1) The court shall not grant any monetary relief or, except as provided for in section 193DB, make any order against a network service provider for any infringement of copyright in any material that occurs by reason of —

(a) the transmission or routing by the network service provider of, or the provision of connections by the network service provider for, an electronic copy of the material through the network service provider's primary network; or

(b) any transient storage by the network service provider of an electronic copy of the material in the course of such transmission, routing or provision of connections,

if the network service provider satisfies the conditions set out in subsection (2).

[52/2004]

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

(a) the transmission of the electronic copy of the material was initiated by or at the direction of a person other than the network service provider;

(b) the transmission, routing, provision of connections or storage is carried out through an automatic technical process without any selection of the electronic copy of the material by the network service provider;

(c) the network service provider does not select the recipients of the electronic copy of the material except as an automatic response to the request of another person; and

(d) the network service provider does not make any substantive modification (other than any modification made as part of a technical process) to the content of the electronic copy of the material during the transmission of the electronic copy of the material through the primary network.

System caching

193C. —(1) The court shall not grant any monetary relief or, except as provided for in section 193DB, make any order against a network service provider for any infringement of copyright in any material that occurs by reason of the making by the network service provider of an electronic copy of the material (referred to in this section as the cached copy) on the network service provider's primary network —

- (a) from another electronic copy of the material made available on a network (referred to in this section as the originating network);
- (b) through an automatic process;
- (c) in response to an action by a user of the primary network; and
- (d) in order to facilitate efficient access to the material by that user or other users, if the network service provider satisfies the conditions set out in subsection (2).

[52/2004]

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

- (a) the network service provider does not make any substantive modification (other than any modification made as part of a technical process) to the content of the cached copy of the material during the transmission of the cached copy of the material to users of the primary network or another network;
- (b) if the network service provider is furnished in the prescribed manner with a notice in, or substantially in accordance with, the prescribed form relating to the cached copy of the material —
 - (i) purportedly made by the owner of the copyright in the material or under the owner's authority; and
 - (ii) stating the prescribed matters,the network service provider expeditiously takes reasonable steps to remove or disable access to the cached copy of the material on the primary network; and
- (c) the network service provider satisfies such other conditions as the Minister may prescribe in relation to —
 - (i) access to the cached copy of the material by users of the primary network or another network;

(ii) the refreshing, reloading or updating of the cached copy of the material; and
(iii) non-interference with technology used at the originating network to obtain information about the use of any material on the originating network, being technology that is consistent with industry standards in Singapore.

[52/2004;22/2005]

Storage and information location

193D. —(1) The court shall not grant any monetary relief or, except as provided for in section 193DB, make any order against a network service provider for any infringement of copyright in any material that occurs by reason of —

(a) the storage, at the direction of a user of the network service provider's primary network, of an electronic copy of the material on the primary network, if the network service provider satisfies the conditions referred to in subsection (2);
or

(b) the network service provider referring or linking a user of any network to an online location on a network (referred to in this section as the originating network), being a location at which an electronic copy of the material is made available, by the use of —

(i) an information location tool such as a hyperlink or directory; or

(ii) an information location service such as a search engine,

if the network service provider satisfies the conditions referred to in subsection (4).

[52/2004]

(2) The conditions referred to in subsection (1) (a) are that —

(a) the network service provider does not receive any financial benefit directly attributable to the infringement of the copyright in the material that occurs in, or in the course of, making available the electronic copy of the material on the primary network, provided that the network service provider has the right and ability to control the infringing activity;

(b) if the network service provider —

(i) acquires actual knowledge that the copyright in the material has been infringed in, or in the course of, making available the electronic copy of the material on the primary network;

(ii) acquires knowledge of such facts or circumstances which would lead inevitably to the conclusion that the copyright in the material has been infringed in, or in the course of, making available the electronic copy of the material on the primary network; or

(iii) is furnished in the prescribed manner with a notice in, or substantially in accordance with, the prescribed form relating to the electronic copy of the material on the primary network —

(A) purportedly made by the owner of the copyright in the material or under the owner's authority; and

(B) stating the prescribed matters,

the network service provider expeditiously takes reasonable steps to remove or disable access to the copy of the material on the primary network; and

(c) the network service provider has designated a representative to receive any notice referred to in paragraph (b) (iii) and published the prescribed information on the designated representative in the prescribed manner.

[52/2004;22/2005]

(3) For the purposes of subsection (2), a notice purportedly made by the owner of the copyright in the material or under the owner's authority which is not a notice referred to in subsection (2) (b) (iii) shall not be considered in determining whether the network service provider has acquired any knowledge referred to in subsection (2) (b) (i) or (ii).

[22/2005]

(4) The conditions referred to in subsection (1) (b) are that —

(a) the network service provider does not receive any financial benefit directly attributable to the infringement of the copyright in the material that occurs in, or in the course of, making available the electronic copy of the material on the originating network, provided that the network service provider has the right and ability to control the infringing activity;

(b) if the network service provider —

(i) acquires actual knowledge that the copyright in the material has been infringed in, or in the course of, making available the electronic copy of the material on the originating network;

(ii) acquires knowledge of such facts or circumstances which would lead inevitably to the conclusion that the copyright in the material has been infringed in, or in the course of, making available the electronic copy of the material on the originating network; or

(iii) is furnished in the prescribed manner with a notice in, or substantially in accordance with, the prescribed form relating to the electronic copy of the material on the originating network —

(A) purportedly made by the owner of the copyright in the material or under the owner's authority; and

(B) stating the prescribed matters,

the network service provider expeditiously takes reasonable steps to disable access to the electronic copy of the material on the originating network, and to remove or disable access to any electronic copy of the material (being a copy made from the electronic copy of the material on the originating network and of which the network service provider has actual knowledge) on the primary network; and

(c) the network service provider has designated a representative to receive any notice referred to in paragraph (b) (iii) and published the prescribed information on the designated representative in the prescribed manner.

[52/2004;22/2005]

(5) For the purposes of subsection (4), a notice purportedly made by the owner of the copyright in the material or under the owner's authority which is not a notice referred to in subsection (4) (b) (iii) shall not be considered in determining whether the network service provider has acquired any knowledge referred to in subsection (4) (b) (i) or (ii).

[22/2005]

(6) For the purposes of subsections (2) (a) and (4) (a), in determining whether a financial benefit is directly attributable to the infringement of copyright in the material, the court shall have regard to —

(a) industry practice in relation to the charging of services by network service providers;

- (b) whether the financial benefit was greater than the benefit that would usually result from charging in accordance with accepted industry practices; and
- (c) all other matters that the court considers relevant.

[22/2005]

Exemption of network service provider from liability for removal of copy, etc., from network

193DA. —(1) Notwithstanding anything to the contrary in any law (written or otherwise), a network service provider shall not be subject to any liability under any rule of law in respect of any action taken in good faith in relation to —

- (a) the removal of an electronic copy of any material from his primary network; or
- (b) the disabling of access to an electronic copy of any material on his primary network or another network,

if —

- (i) such removal or disabling was done in reliance on any notice referred to in section 193C (2) (b) or 193D (2) (b) (iii) or (4) (b) (iii) or any knowledge referred to in section 193D (2) (b) (i) or (ii) or (4) (b) (i) or (ii); and
- (ii) in the case of any removal or disabling done in reliance on any notice referred to in section 193D (2) (b) (iii) or (4) (b) (iii) or any knowledge referred to in section 193D (2) (b) (i) or (ii) or (4) (b) (i) or (ii), the conditions referred to in subsection (2) are satisfied.

[52/2004]

- (2) The conditions referred to in subsection (1) (ii) are that —
 - (a) after such removal or disabling, the network service provider expeditiously takes reasonable steps —
 - (i) to notify the person who made available the electronic copy of the material on the network of this; and
 - (ii) in the case of any removal or disabling done in reliance on any notice referred to in section 193D (2) (b) (iii) or (4) (b) (iii), to provide that person with a copy of that notice; and
 - (b) where the network service provider is furnished in the prescribed manner, within the prescribed time, with a notice in, or substantially in accordance with, the prescribed form purportedly made by the person who made available the

electronic copy of the material on the network, or under that person's authority, stating the prescribed matters (referred to in this section as the counter notice)

—

(i) in the case of any removal or disabling done in reliance on any notice referred to in section 193D (2) (*b*) (iii) or (4) (*b*) (iii) —

(A) subject to any other written law relating to privacy or data protection, the network service provider expeditiously provides the person who furnished the notice referred to in section 193D (2) (*b*) (iii) or (4) (*b*) (iii) with a copy of the counter notice;

(B) the network service provider expeditiously notifies the person who furnished the notice referred to in section 193D (2) (*b*) (iii) or (4) (*b*) (iii) that the network service provider will take reasonable steps to restore the electronic copy of the material to the network or to restore access to that electronic copy, as the case may be, if it is technically and practically feasible to do so, unless, within 10 working days after the date of such notification —

(BA) court proceedings are commenced by the owner of the copyright in the material, or under the owner's authority, to prevent that electronic copy or the access to that electronic copy, as the case may be, from being restored; and

(BB) the network service provider is informed in writing of the court proceedings; and

(C) the network service provider takes reasonable steps to restore the electronic copy of the material to the network or to restore access to that electronic copy, as the case may be, if it is technically and practically feasible to do so, not less than 10, nor more than 14, working days after the date of the notification referred to in sub-paragraph (B), unless, within 10 working days after that date —

(CA) court proceedings are commenced by the owner of the copyright in the material, or under the owner's authority, to prevent that electronic copy or the access to that electronic copy, as the case may be, from being restored; and

(CB) the network service provider is informed in writing of the court proceedings; or

(ii) in the case of any removal or disabling done in reliance on any knowledge referred to in section 193D (2) (*b*) (i) or (ii) or (4) (*b*) (i) or (ii), the network service

provider takes reasonable steps to restore the electronic copy of the material to the network or to restore access to that electronic copy, as the case may be, if it is technically and practically feasible to do so, not less than 10, nor more than 14, working days after the date the network service provider is furnished with the counter notice, unless, within 10 working days after that date —

(A) court proceedings are commenced by the owner of the copyright in the material, or under the owner's authority, to prevent that electronic copy or the access to that electronic copy, as the case may be, from being restored; and

(B) the network service provider is informed in writing of the court proceedings.

[22/2005]

(3) Subsection (1) shall apply whether or not it is ultimately determined that any relevant act that was carried out constitutes an infringement of copyright in the material under this Act.

[52/2004]

(4) Notwithstanding anything to the contrary in any law (written or otherwise), a network service provider shall not be subject to any liability under any rule of law in respect of any action taken in good faith in relation to —

(a) the restoration of an electronic copy of any material to his primary network; or
(b) the restoration of access to an electronic copy of any material on any network, if such restoration was done in reliance on any counter notice referred to in subsection (2) (b).

[52/2004;22/2005]

(5) A network service provider shall not be treated as having authorised the doing of any act which is an infringement of copyright under this Act solely by reason of the occurrence of only one of the following matters:

(a) the network service provider has provided a facility which was used by another person to do that act;

(b) the network service provider has received any notice referred to in section 193C (2) (b) or 193D (2) (b) (iii) or (4) (b) (iii) in respect of that act;

(c) the network service provider has acquired any knowledge referred to in section 193D (2) (b) (i) or (ii) or (4) (b) (i) or (ii) in respect of that act.

[22/2005]

Relief which court may grant

193DB. —(1) The types of relief that the court may grant against a network service provider, if the court is satisfied that section 193B (1) applies to the network service provider, shall be limited to either or both of the following:

- (a) an order requiring the network service provider to take reasonable steps to disable access to an online location that is physically situated outside Singapore;
- (b) an order requiring the network service provider to terminate a specified account.

[52/2004]

(2) The types of relief that the court may grant against a network service provider, if the court is satisfied that section 193C (1) or 193D (1) applies to the network service provider, shall be limited to one or more of the following:

- (a) an order requiring the network service provider —
 - (i) to remove an infringing electronic copy of the material from the network service provider's primary network; or
 - (ii) to disable access to an infringing electronic copy of the material on the primary network or another network;
- (b) an order requiring the network service provider to terminate a specified account;
- (c) such other order or orders as may be necessary, if that order is, or those orders are, the least burdensome to the network service provider among comparatively effective non-monetary orders.

[52/2004]

(3) When making an order under subsection (1) or (2), the court shall have regard to —

- (a) the harm that has been or may foreseeably be caused to the plaintiff;
- (b) the burden that the making of the order will place on the network service provider;
- (c) the technical feasibility of complying with the order;
- (d) the effectiveness of the order;
- (e) any possible adverse effect on the business or operations of the network service provider;

- (f) whether some other comparatively effective order would be less burdensome; and
- (g) all other matters which it considers relevant.

[52/2004]

Evidence of compliance with conditions

193DC. If, in an action relating to this Part, a network service provider adduces evidence, as prescribed, that suggests that he has complied with a condition —

- (a) referred to in section 193B (2), 193C (2) or 193D (2) or (4); or
- (b) prescribed in any regulations made under section 193DE,

the court shall presume, in the absence of evidence to the contrary, that the network service provider has complied with that condition.

[52/2004]

Maker of false notice guilty of offence and liable in damages

193DD. —(1) A person who, in making a notice under section 193C (2) (b), 193D (2) (b) (iii) or (4) (b) (iii) or 193DA (2) (b), makes any statement which is false, which he knows is false or does not believe to be true, and which touches any point material to the object of the notice —

- (a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years; and
- (b) shall also be liable in damages to any person who suffers any loss or damage as a result of the making of that notice for any such loss or damage that is reasonably foreseeable as likely to result from the making of that notice.

[52/2004]

(2) Subsection (1) shall apply whether or not the statement is made in Singapore, and if a person makes the statement outside Singapore, he may be dealt with under subsection (1) (a) as if the offence were committed in Singapore.

[52/2004]

Regulations

193DE. —(1) The Minister may make regulations prescribing any thing required or authorised to be prescribed under this Part.

[52/2004]

(2) Without prejudice to the generality of subsection (1), the regulations may —

(a) prescribe the procedure or requirements for the notices to be furnished under this Part, including the forms of and information to be contained in such notices, the manner of sending such notices, and the manner of verification of statements in such notices; and

(b) prescribe other conditions which a network service provider must comply with in order to benefit from the provisions in this Part.

[52/2004]

User caching

193E. Copyright in any material is not infringed by the making of a transient and incidental electronic copy of the material from an electronic copy of the material made available on a network, if the making of the first-mentioned copy is required for the viewing, listening or utilisation of the material by a user of this or another network.

[38/99;22/2005]

Transfer of electronic copy of material

193F. —(1) This section shall apply where an electronic copy of any material has been purchased on or after 15th December 1999 on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the material, or to adapt it or make copies of an adaptation, in connection with his use of it.

[38/99]

(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.

[38/99]

(3) Notwithstanding subsection (2), any copy (including the original purchased copy), adaptation or copy of an adaptation which is not also transferred is to be treated as an infringing copy of the material for all purposes after the transfer.

[38/99]

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

[38/99]

(5) Subsections (2), (3) and (4) shall also apply on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.

[38/99]

PART X

MISCELLANEOUS

Assignments and licences in respect of copyright

194. —(1) Subject to this section, copyright shall be transmissible by assignment, by testamentary disposition, or by operation of law as personal or movable property.

(2) An assignment of copyright may be limited in any of the following ways, or in any combination of 2 or more of those ways:

(a) so as to apply to one or more, but not all, of the classes of acts which by virtue of this Act the owner of the copyright has the exclusive right to do (including any one or more classes of acts not separately designated in this Act as being restricted by the copyright, but falling within any of the classes of acts so designated);

(b) so as to apply to any one or more, but not all, of the countries in relation to which the owner of the copyright has by virtue of this Act that exclusive right;

(c) so as to apply to part, but not the whole, of the period for which the copyright is to subsist,

and references in this Act to a partial assignment are references to an assignment so limited.

(3) No assignment of copyright (whether total or partial) shall have effect unless it is in writing signed by or on behalf of the assignor.

(4) Subject to subsection (4A), a licence granted in respect of any copyright by the person who, in relation to the matters to which the licence relates, is the owner of the copyright shall be binding upon every successor in title to his interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser.

[21/2004]

(4A) A licence granted to the Government or any statutory board on or after 1st July 2004 in respect of any copyright by the person who, in relation to the matters to which the licence relates, is the owner of the copyright shall be binding upon every successor in title to his interest in the copyright.

[21/2004]

(5) References in this Act, in relation to any copyright, to the doing of anything with, or (as the case may be) without, the licence of the owner of the copyright shall be construed accordingly.

(6) In this section, "statutory board" means any body corporate established by or under any written law to perform or discharge a public function.

[21/2004]

[Aust. 1968, s. 196]

Prospective ownership of copyright

195. —(1) Where by an agreement made in relation to any 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 (referred to in this subsection as the assignee), then if, on the coming into existence of the copyright, the assignee or a person claiming under him would, apart from this subsection, be entitled as against all other persons to require the copyright to be vested in him (wholly or partially, as the case may be), the copyright shall, on its coming into existence, vest in the assignee or his successor in title accordingly by virtue of this subsection and without further assurance.

(2) Where, at the time when any copyright comes into existence, the person who, if he were then living, would be entitled to the copyright is dead, the copyright

shall devolve as if it had subsisted immediately before his death and he had then been the owner of the copyright.

(3) Section 194 (4) and (4A) shall apply in relation to a licence granted by a prospective owner of any copyright as it applies in relation to a licence granted by the owner of a subsisting copyright, as if any reference in that subsection to the owner's interest in the copyright included a reference to his prospective interest therein.

[21/2004]

[Aust. 1968, s. 197]

Copyright to pass under will with unpublished work

196. Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work 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 thereto, be construed as including the copyright in the work insofar as the testator was the owner of the copyright immediately before his death.

[Aust. 1968, s. 198]

Provisions as to Government copyright

197. —(1) In the case of every original literary, dramatic, musical or artistic work made by or under the direction or control of the Government —

(a) if apart from this section copyright would not subsist in the work, copyright shall subsist therein by virtue of this subsection; and

(b) in any case, the Government shall, subject to this Part, be entitled to the copyright in the work.

(2) The Government shall, subject to this Part, be entitled to the copyright in every original literary, dramatic, musical or artistic work first published in Singapore, or in another country to which section 27 extends, if first published by or under the direction or control of the Government.

(3) Copyright in a literary, dramatic or musical work, to which the Government is entitled in accordance with subsection (1) or (2) —

(a) where the work is unpublished, shall continue to subsist so long as the work remains unpublished; and

(b) where the work is published, shall subsist (or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist) until the end of the period of 70 years from the end of the calendar year in which the work was first published, and shall then expire.

[21/2004]

(4) Copyright in an artistic work to which the Government is entitled in accordance with this section shall continue to subsist until the end of the period of 70 years from the end of the calendar year in which the work was made, and shall then expire.

[21/2004]

(4A) Where the work referred to in subsection (4) is an engraving or a photograph, the copyright shall continue to subsist until the end of the period of 70 years from the end of the calendar year in which the engraving or photograph is first published.

[21/2004]

(5) In the case of every sound recording or cinematograph film made by or under the direction or control of the Government —

(a) if apart from this section copyright would not subsist in the recording or film, copyright shall subsist therein by virtue of this subsection; and

(b) in any case, the Government shall, subject to this Part, be entitled to the copyright in the recording or film; and it shall subsist for the same period as if it were copyright subsisting by virtue of, and owned in accordance with, Part IV.

(6) This section shall have effect subject to any agreement made by or on behalf of the Government with the author of the work, or the maker of the sound recording or cinematograph film, as the case may be, whereby it is agreed that the copyright in the work, recording or film shall vest in the author or maker, or in another person designated in the agreement in that behalf.

(7) In relation to copyright subsisting by virtue of this section —

(a) in the case of a literary, dramatic, musical or artistic work, the provisions of Part III, with the exception of provisions thereof relating to the subsistence, duration or ownership of copyright; and

(b) in the case of a sound recording, cinematograph film or cable programme, the provisions of Part IV, with the exception of provisions thereof relating to the subsistence or ownership of copyright,

shall apply as those provisions apply in relation to copyright subsisting by virtue of Part III or IV, as the case may be.

(8) For the avoidance of doubt, it is hereby declared that section 12 of the Government Proceedings Act (Cap. 121) (which relates to infringements of industrial property by employees or agents of the Government) shall apply to copyright under this Act.

[Aust. 1968, ss. 176, 177, 178, 179, 180, 181 and 182]

Use of copyright material for service of Government

198. —(1) The copyright in a literary, dramatic, musical or artistic work or a published edition of such a work, or in a sound recording, cinematograph film, television broadcast, sound broadcast or cable programme, shall not be infringed by the Government or by a person authorised in writing by the Government doing any acts comprised in the copyright if the acts are done for the service of the Government.

(2) Where the Government has made an agreement or arrangement with the government of some other country for the supply to that country of goods required for the defence of that country —

(a) the doing of any act in connection with the supply of those goods in pursuance of the agreement or arrangement; and

(b) the sale to any person of such of those goods as are not required for the purposes of the agreement or arrangement,

shall, for the purposes of subsection (1), be each deemed to be for the service of the Government.

(3) Authority may be given under subsection (1) before or after the acts in respect of which the authority is given have been done, and may be given to a

person notwithstanding that he had a licence granted by, or binding on, the owner of the copyright to do the acts.

(4) Where an act comprised in a copyright has been done under subsection (1), the Government shall as soon as possible, unless it appears to the Government that it would be contrary to the public interest to do so, inform the owner of the copyright, as prescribed, of the doing of the act and shall furnish him with such information as to the doing of the act as he from time to time reasonably requires.

(5) Where an act comprised in a copyright has been done under subsection (1), the terms for the doing of the act are such terms as are, whether before or after the act is done, agreed between the Government and the owner of the copyright or, in default of agreement, as are fixed by a Copyright Tribunal.

(6) An agreement or licence (whether made or granted before or after 10th April 1987) fixing the terms upon which a person other than the Government may do acts comprised in a copyright is inoperative with respect to the doing of those acts after that date, under subsection (1), unless the agreement or licence has been approved by the Minister.

[S 107/87]

(7) Where an article is sold and the sale is not by virtue of subsection (1), an infringement of a copyright, the purchaser of the article, and a person claiming through him, is entitled to deal with the article as if the Government were the owner of that copyright.

(8) An act done under subsection (1) does not constitute publication of a work or other subject-matter and shall not be taken into account in the application of any provision of this Act relating to the duration of any copyright.

(9) Where an exclusive licence is in force in relation to any copyright, subsections (1) to (8) shall have effect as if any reference in those subsections to the owner of the copyright were a reference to the exclusive licensee.

(10) The copying of the whole or a part of a work for the teaching purposes of an educational institution of, or under the control of, the Government shall, for the purposes of this section, be deemed not to be an act done for the service of the Government.

[Aust. 1968, s. 183]

Reception of broadcasts or cable programmes

199. —(1) A person who, by the reception of a television broadcast, sound broadcast or cable programme, causes a literary, dramatic or musical work, or an adaptation of such work, to be seen, heard or seen and heard, in public does not, by doing so, infringe the copyright, if any, in the work.

(2) A person who, by the reception of an authorised television broadcast or authorised cable programme, causes a cinematograph film to be seen, heard or seen and heard, in public shall be treated, in any proceedings for infringement of the copyright (if any) in the film under Part IV, as if he had been the holder of a licence granted by the owner of that copyright to cause the film to be seen or heard in public by the reception of the broadcast or the cable programme.

(3) A person who, by the reception and immediate retransmission of an authorised television broadcast or sound broadcast causes a literary, dramatic or musical work or an adaptation of such a work, an artistic work or a cinematograph film to be included in a programme in a cable programme service shall be treated, in any proceedings for infringement of the copyright, if any, in the work or film, as if he had been the holder of a licence granted by the owner of that copyright to include the work, adaptation or film to be transmitted by him in any programme included in a cable programme service.

[52/2004]

(4) If, in the circumstances mentioned in subsection (2) or (3), the person causing the cinematograph film to be seen or heard, or the work, adaptation or cinematograph film to be transmitted, as the case may be, infringed the copyright in question, by reason that the broadcast or cable programme was not an authorised broadcast or programme, proceedings shall not be brought against that person under this Act in respect of his infringement of that copyright, but it shall be taken into account in assessing damages in any proceedings against the maker of the broadcast or programme in respect of that copyright, insofar as that copyright was infringed by them in making the broadcast or programme.

(5) For the purposes of this section, a broadcast or cable programme shall be taken, in relation to a work, an adaptation of a work or a cinematograph film, to be an authorised broadcast or programme if, but only if, it is made by, or with the licence of, the owner of the copyright in the work or film.

(6) A reference in subsection (3) to a broadcast shall —

(a) in the case of a television broadcast, be read as a reference to a television broadcast made from a place in Singapore by the holder of a broadcasting licence; and

(b) in the case of a sound broadcast, be read as a reference to a sound broadcast made from a place in Singapore by the holder of a broadcasting licence.

[38/99]

(7) For the avoidance of doubt, a reference in subsection (3) to an inclusion of a literary, dramatic, musical or artistic work or a cinematograph film in a programme in a cable programme service shall not include the making available of the work or film on the Internet.

[52/2004]

[Aust. 1968, s. 199]

Groundless threats of legal proceedings

200. —(1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding in respect of an infringement of copyright, then, whether the person making the threats is or is not the owner of the copyright or an exclusive licensee, a person aggrieved may bring an action against the first-mentioned person and may —

(a) obtain a declaration to the effect that the threats are unjustifiable;

(b) obtain an injunction against the continuance of the threats; and

(c) recover such damages, if any, as he has sustained,

unless the first-mentioned person satisfies the court that the acts in respect of which the action or proceeding was threatened constituted, or, if done, would constitute, an infringement of copyright.

(2) The mere notification of the existence of a copyright does not constitute a threat of an action or proceeding within the meaning of this section.

(3) Nothing in this section shall render an advocate and solicitor liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

(4) The defendant in an action under this section may apply, by way of counterclaim, for relief to which he would be entitled in a separate action in respect of an infringement by the plaintiff of the copyright to which the threats relate and, in any such case, the provisions of this Act with respect to an action for infringement of a copyright are, with the necessary modifications, applicable in relation to the action.

[Aust. 1968, s. 202]

Notation of copies, etc.

201. —(1) In proceedings against a person or body for infringement of copyright in a work in connection with the making, by or on behalf of an institution, of a copy of the whole or a part of that work, the person or body is not entitled to rely on section 45, 46, 48, 52, 54 or 54A as justification for the making of that copy unless, at or about the time the copy was made, there was made on the copy a notation —

(a) stating that the copy was made on behalf of that institution and the date on which it was made; and

(b) in the case of a copy that was made in reliance on section 54 (4), stating that the copy is a prescribed reproduction made in reliance on that subsection.

[6/98]

(2) In proceedings against a person or body for infringement of copyright in a sound recording or a cinematograph film in connection with the making, by or on behalf of an institution, of a copy of the sound recording or cinematograph film, the person or body is not entitled to rely on section 113 as justification for the making of the copy unless, at or about the time the copy was made, there was made on, or attached to, the copy a notation stating that the copy was made on behalf of that institution and setting out the date on which the copy was made.

(3) In proceedings against a person or body for infringement of copyright in a work in connection with the making, on behalf of an institution assisting

handicapped readers, a record embodying a sound recording of the work, or of a part of the work, the person or body is not entitled to rely on section 54 (1) unless, at the time the record was made, there was embodied on the record, immediately before the commencement of that sound recording, a sound recording of a prescribed message.

(4) A person who —

(a) makes on a copy of the whole or a part of a work, a notation referred to in subsection (1);

(b) makes on, or attaches to, a copy of a sound recording or a cinematograph film a notation of the kind referred to in subsection (2); or

(c) causes to be embodied on a record embodying a sound recording a message referred to in subsection (3),

being a notation of message that contains a statement that the person knows, or ought reasonably to know, is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

(5) For the purposes of subsections (1), (2) and (3) —

(a) where a copy of a work, a sound recording or a cinematograph film is made, or caused to be made, by an authorised officer of a library, or is made by or on behalf of the officer-in-charge of a library, being a library of an institution, the copy shall be deemed to have been made on behalf of the institution;

(b) where a copy of a work, a sound recording or a cinematograph film is made, or caused to be made by an authorised officer of a library, or is made by or on behalf of the officer-in-charge of a library, being a library that is not a library of an institution, then —

(i) the copy shall be deemed to have been made on behalf of the person or body administering the library; and

(ii) those subsections apply as if a reference in those subsections to an institution included a reference to that person or body;

(c) where a copy of a work, a sound recording or a cinematograph film is made, or caused to be made, by an authorised officer of archives, or is made by or on behalf of the officer-in-charge of archives, then —

- (i) the copy shall be deemed to have been made on behalf of the person or body administering the archives; and
 - (ii) those subsections apply as if a reference in those subsections to an institution included a reference to that person or body;
 - (d) where a copy, or a record embodying a sound recording, of a whole or of a part of a work, is made by or on behalf of the body administering an institution, the copy or record, as the case may be, shall be deemed to have been made on behalf of the institution; and
 - (e) where a copy of a sound recording or cinematograph film is made by or on behalf of the body administering an institution, the copy shall be deemed to have been made on behalf of the institution.
- (6) The production, in any proceedings —
- (a) for infringement of copyright in a work;
 - (b) before a Copyright Tribunal on application made under section 52 (11), 54 (10) or 54A (7); or
 - (c) for a contravention of a provision of this Act,
- of a copy of a work, or of a part of a work, bearing a notation of the kind referred to in subsection (1) is prima facie evidence of the matters stated in the notation.

[6/98]

- (7) For the purposes of subsection (6), where a copy of a work or a part of a work bears a notation of a kind referred to in subsection (1), the notation shall, unless the contrary is proved, be deemed to have been made on the copy at or about the time the copy was made.
- (8) The production, in any proceedings of a kind referred to in subsection (6), of a record embodying a sound recording of a work or a part of a work, being a record that also embodies a sound recording of a message of the kind referred to in subsection (3), is prima facie evidence of the matters stated in the message.
- (9) For the purposes of subsection (8), where a record embodying a sound recording of a work or a part of a work also embodies a sound recording of a message of the kind referred to in subsection (3), the message shall, unless the

contrary is proved, be deemed to have been embodied on the record at the time the record was made.

(10) The production, in any proceedings —

- (a) for infringement of copyright in a sound recording or a cinematograph film; or
- (b) for a contravention of this Act,

of a copy of a sound recording or a cinematograph film bearing, or to which there is attached, a notation of the kind referred to in subsection (2), is prima facie evidence of the matters stated in the notation.

(11) For the purposes of subsection (10), where a copy of a sound recording or a cinematograph film bears, or where there is attached to such a copy, a notation of the kind referred to in subsection (2), the notation shall, unless the contrary is proved, be deemed to have been made on or attached to the copy at or about the time the copy was made.

(12) In this section, "copy", in relation to a work, or a part of a work, includes a microform copy, a Braille version, a large-print version, or a photographic version, of the work, or of the part of the work.

[Aust. 1968, s. 203H]

Immunity of Government, etc.

201A. No action or other legal proceedings shall lie against the Government or any officer or employee thereof for anything which is in good faith done or omitted to be done in the exercise of any power, duty or function under this Act or any regulations.

[6/98]

[Aust. 1968, s. 135AK]

Offence committed by partnership or body corporate

201B. —(1) Proceedings for an offence under section 136, 139 or 254A alleged to have been committed by a partnership shall be brought against the partnership in the name of the firm and not in that of the partners; but without prejudice to any liability of the partners under subsection (3).

[38/99]

(2) A fine imposed on a partnership on its conviction in such proceedings shall be paid out of the partnership assets.

[38/99]

(3) Where a partnership is guilty of an offence under section 136, 139 or 254A, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.

[38/99]

(4) Where an offence under section 136, 139 or 254A committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

[38/99]

Regulations

202. —(1) The Minister may make regulations, not inconsistent with this Act prescribing all matters that are required to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), the regulations made under this Act may provide for —

- (a) the keeping and retention of records and declarations in relation to copies of works made by libraries, archives or institutions;
- (b) the deposit of such records and declarations with persons appointed by the Minister; and
- (c) the fees payable in respect of any application or matter under this Act.

[22/2005]

203. (*Omitted*)

204. (*Omitted*)

PART XI

TRANSITIONAL

Division 1 — Preliminary

Interpretation of this Part

205. —(1) In this Part, the expression "photograph" shall, in lieu of the meaning given to that expression by section 7, have the meaning given by subsection (2).

(2) For the purposes of any provision of this Part that provides that an expression is to have the meaning given to that expression by this section or that refers to an expression as defined by this section —

"collective works" means —

(a) an encyclopaedia, dictionary, year book or similar work;

(b) a newspaper, review, magazine or similar periodical; or

(c) a work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

"deliver" , in relation to a lecture, includes deliver by means of a mechanical instrument;

"dramatic work" includes a piece for recitation, a choreographic work or entertainment in dumb show the scenic arrangement or acting form of which is fixed in writing or otherwise, and a cinematograph production where the arrangement, the acting form or the combination of incidents represented gives the work an original character;

"lecture" includes an address, speech and sermon;

"literary work" includes a map, chart, plan, table and compilation;

"perform" , in relation to a dramatic work as defined by this section or a musical work, means to make an acoustic representation of the work or a visual representation of a dramatic action in the work, and includes such a representation made by means of a mechanical instrument;

"photograph" includes photo-lithograph and a work produced by a process similar to photography.

[Aust. 1968, s. 204]

References to making of works, recordings and films

206. For the purposes of any reference in this Part to works, sound recordings or cinematograph films made before 10th April 1987, a work, sound recording or cinematograph film the making of which extended over a period shall be deemed

not to have been made before that date unless the making of it was completed before that date.

[S 107/87]

[Aust. 1968, s. 205]

References in other laws or instruments to copyright

207. —(1) Without prejudice to the operation of the other provisions of this Part

—

(a) a reference in any other written law or in any contract, agreement or other instrument to a provision of the Copyright Act 1911 shall be read as a reference, or as including a reference, to the corresponding provision of this Act;

(b) a reference in any other written law or in any contract, agreement or other instrument to copyright or to works in which copyright subsists shall, if apart from this Act it would be read as a reference to copyright under the Copyright Act 1911 or to works in which copyright subsisted under that Act, be read as a reference, or as including a reference, to copyright under this Act or to works or any other subject-matter in which copyright subsists under this Act, as the case may be; and

(c) a reference in any other written law or in any contract, agreement or other instrument to the grant of an interest in copyright by licence shall be read, in relation to copyright under this Act, as a reference to the grant of a licence in respect of that copyright.

(2) This section shall have effect unless the contrary intention appears in any other written law or in the contract, agreement or other instrument, as the case may be.

[Aust. 1968, s. 206]

Authorship of photographs

208. A reference in this Act to the author of a photograph shall, in relation to a photograph taken before 10th April 1987, be read as a reference to the person who, at the time when the photograph was taken, was the owner of the material on which the photograph was taken.

[Aust. 1968, s. 208]

Publication

209. —(1) For the purposes of the application of section 24 (5) in determining whether a publication that took place before 10th April 1987 was the first publication, the reference in that section to a period of not more than 30 days shall be read as a reference to a period of not more than 14 days.

[S 107/87]

(2) For the purposes of the application of section 24 (7) in relation to an act done before that date —

(a) a reference in that section to copyright shall include a reference to copyright under the Copyright Act 1911; and

(b) a reference in that section to the licence of the owner of copyright shall be read as a reference to the consent or acquiescence of the owner.

[Aust. 1968, s. 209]

Division 2 — Original Works

Expired copyright not to revive

210. —(1) Notwithstanding anything in Part III, copyright shall not subsist by virtue of that Part in a work first published before 10th April 1987 unless copyright subsisted in the work under the Copyright Act 1911 immediately before that date.

(2) Subsection (1) shall not apply in relation to a work to which Division 5 applies.

[Aust. 1968, s. 210]

Original works in which copyright subsists

211. —(1) Section 27 (1) shall apply to works made before 10th April 1987 as if each reference in that subsection to a qualified person included a reference to a British subject and to a person domiciled in a country to which the Copyright Act 1911 extended.

(2) Section 27 (2) shall apply to works first published before 10th April 1987 —

(a) as if each reference in paragraph (c) of that subsection to Singapore included a reference to a country to which the Copyright Act 1911 extended; and

(b) as if paragraphs (d) and (e) of that subsection were omitted.

(3) Section 27 (2) shall apply to works that are first published after 10th April 1987 and the author of which died before the commencement of the repealed Singapore Citizenship Ordinance 1957 (Ord. 35/57) as if the reference in paragraph (e) of that section to a qualified person included a reference to a person who would have been a citizen of Singapore if that Ordinance had been in force immediately before his death.

(4) Section 27 (3) shall not apply to or in relation to a building that was constructed before 10th April 1987.

[S 107/87]

(5) This section shall have effect subject to section 210.

[Aust. 1968, s. 211]

Duration of copyright in photographs

212. Section 28 (6) shall not apply in relation to a photograph taken before 10th April 1987 but, subject to section 27 (2) as affected by section 207, copyright subsisting in such a photograph by virtue of Part III shall continue to subsist until the expiration of 70 years after the expiration of the calendar year in which the photograph was taken.

[21/2004]

[Aust. 1968, s. 212]

Ownership of copyright

213. —(1) Section 30 (4) and (6) shall not apply in relation to works made before 10th April 1987.

(2) Section 30 (5) shall not apply in relation to a work that was or is made in pursuance of an agreement made before 10th April 1987.

(3) Where a work is excluded from the application of section 30 (4), (5) or (6) by reason of either of subsection (1) or (2), section 30 (2) shall have effect in relation to the work subject to subsections (4) to (8).

(4) The operation of any of subsections (5) to (8) in relation to a particular work may be excluded or modified by agreement.

(5) Where, in the case of a work being a photograph, portrait or engraving —

(a) a person made, for valuable consideration, an agreement with another person for the taking of the photograph, the painting or drawing of the portrait or the making of the engraving by the other person; and

(b) the work was made in pursuance of the agreement,
the first-mentioned person is the owner of any copyright subsisting in the work by virtue of Part III.

(6) Where the work was made by the author in pursuance of the terms of his employment by another person under a contract of service or apprenticeship, that other person is the owner of any copyright subsisting in the work by virtue of Part III.

(7) Where the work is a literary, dramatic or artistic work that was made by the author in pursuance of the terms of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship and was so made for the purpose of publication in a newspaper, magazine or similar periodical, the author is entitled to restrain the publication of the work otherwise than in a newspaper, magazine or similar periodical.

(8) In subsections (5), (6) and (7), expressions that are defined by section 205 shall have the meanings respectively given to those expressions by that section and shall not have the meanings, if any, respectively given to those expressions by Part II.

[Aust. 1968, s. 213]

Recording of musical works

214. —(1) Where a record of a work has, before 10th April 1987, been made by, or with the consent or acquiescence of, the owner of the copyright in the work under the Copyright Act 1911, Division 8 of Part III shall have the like effect as if the record had been made in Singapore for the purpose of retail sale and had been so made by, or with the licence of, the person who is entitled, by virtue of this Act, to authorise the making in Singapore of records of the work.

[S 107/87]

(2) Section 19 (2) to (7) of the Copyright Act 1911 as in force immediately before 10th April 1987 shall continue to apply in relation to records made before that date and, subject to that section, any regulations made for the purposes of that

section and in force immediately before that date shall continue to apply in relation to those records.

[Aust. 1968, s. 215]

Publication of artistic works

215. Section 66 shall not apply in relation to a painting, drawing, engraving, photography or cinematograph film made before 10th April 1987, but the copyright in an artistic work is not infringed by the publication of a painting, drawing, engraving, photograph or cinematograph film made before that date if, by virtue of section 63 or 64, the making of the painting, drawing, engraving, photograph or film would not have constituted an infringement of the copyright under this Act if this Act had been in operation at the time when it was made.

[Aust. 1968, s. 216]

Reconstruction of buildings

216. The reference in section 72 (2) to construction of a building by, or with the licence of, the owner of the copyright in architectural drawings or plans shall be read as including a reference to construction by, or with the licence of, the person who, at the time of the construction, was the owner of the copyright in the drawings or plans.

[Aust. 1968, s. 217]

Industrial designs

217. —(1) Division 10 of Part III and the Schedule shall not apply to artistic works made before 10th April 1987.

[S 107/87]

(2) Copyright shall not subsist by virtue of this Act in an artistic work made before 10th April 1987 which, at the time when the work was made, constituted a design capable of being registered under the Patents and Designs Act 1907 of the United Kingdom (U.K. 1907, c. 29), and was used, or intended to be used, as a model or pattern to be multiplied by an industrial process.

[Aust. 1968, s. 218]

Reproduction of work upon payment of royalties

218. —(1) The copyright in a literary, dramatic, musical or artistic work that has

been published before 10th April 1987 is not infringed by the reproduction of the work for sale if —

(a) the reproduction takes place at a time after the expiration of 25 years, or, in the case of a work in which copyright subsisted at the commencement of the Copyright Act 1911, after the expiration of 30 years, after the date of the death of the author; and

(b) the person reproducing the work establishes —

(i) that, before 10th April 1987, he gave the notice in writing of his intention to reproduce the work that was prescribed for the purposes of the proviso to section 3 of the Copyright Act 1911; and

(ii) that he has paid, in the manner that was prescribed for the purposes of that proviso, or is prescribed for the purposes of this section, as the case may be, to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of 10% of the price at which he published the reproduction.

(2) The regulations may make provision for or in relation to the manner in which, and the times at which, payment of royalties is to be made for the purposes of subsection (1) (b) (ii) and may include provision requiring payment in advance, or otherwise securing the payment of the royalties.

(3) A reference in subsection (1) (a) to a time after the expiration of a specified number of years from the date of the death of the author of a work shall, in the case of a work of joint authorship, be read as a reference to a time after —

(a) the expiration of the same number of years from the date of the death of the author who died first; or

(b) the date of the death of the author who died last,
whichever is the later.

(4) Where a literary, dramatic or musical work, or an engraving, in which copyright subsisted at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who died last —

(a) had not been published;

(b) in the case of a dramatic or musical work — had not been performed in public; and

(c) in the case of a lecture — had not been delivered in public, before that date, subsection (1) shall apply as if the author had died on the date on which —

(d) in the case of a literary work (other than a lecture) or an engraving — the work was first published;

(e) in the case of a dramatic or musical work — the work was first published or first performed in public, whichever first happened; or

(f) in the case of a lecture — the lecture was first published or first delivered in public, whichever first happened.

(5) In this section, expressions that are defined by section 205 shall have the meanings respectively given to those expressions by that section and do not have the meanings, if any, respectively given to those expressions by Part II.

[Aust. 1968, s. 219]

Division 3 — Subject-Matter other than Works

Sound recordings

219. —(1) Section 87 (1) shall apply in relation to sound recordings made before 10th April 1987 as if the reference in that section to a qualified person included a reference to a British subject and to a person domiciled in a country to which the Copyright Act 1911 extended.

[S 107/87]

(2) Section 87 (2) shall not apply in relation to a sound recording made before 10th April 1987.

(3) Section 87 (3) shall apply in relation to sound recordings first published before 10th April 1987 as if the reference in that subsection to Singapore included a reference to a country to which the Copyright Act 1911 extended.

(4) Section 92 shall not apply in relation to a sound recording made before 10th April 1987 but copyright subsisting in such a recording by virtue of section 87 (1) or (3) shall continue to subsist until the expiration of 70 years after the expiration of the calendar year in which the recording was made.

[Aust. 1968, s. 220]

Cinematograph films

220. Copyright shall not subsist by virtue of section 88 in a cinematograph film made before 10th April 1987.

[Aust. 1968, s. 221]

Application of this Act to dramatic works and photographs comprised in cinematograph films

221. —(1) Where a cinematograph film made before 10th April 1987 was an original dramatic work as defined by section 205, this Act (other than this subsection) shall have effect in relation to the film as if the film had been an original dramatic work as defined by section 7 and the person who was the author of the work for the purposes of the Copyright Act 1911 shall be deemed to be the author of the work for the purposes of this Act as having effect by virtue of this subsection.

(2) This Act shall have effect in relation to photographs forming part of a cinematograph film made before 10th April 1987 in like manner as it has effect in relation to photographs not forming part of a cinematograph film.

[Aust. 1968, s. 222]

Television broadcasts and sound broadcasts

222. Copyright shall not subsist by virtue of section 89 in —

- (a) a television broadcast or a sound broadcast made before 10th April 1987; or
- (b) a television broadcast or a sound broadcast made after that date that is a repetition of a television broadcast or a sound broadcast made before that date.

Published editions of works

223. Copyright shall not subsist by virtue of section 91 in a published edition of a work or works where the first publication of the edition took place before 10th April 1987.

[Aust. 1968, s. 224]

Cable programmes

224. Copyright shall not subsist by virtue of section 90 in a cable programme which is included in a cable programme service before 10th April 1987.

Division 4 — Miscellaneous

Actions for infringement

225. Sections 119 and 120 shall not apply to an infringement of copyright under the Copyright Act 1911 and shall not affect any proceedings under that Act, whether instituted before or after 10th April 1987.

[Aust. 1968, s. 226]

Actions where copyright subject to exclusive licence

226. Division 3 of Part V shall not apply in relation to a licence granted before 10th April 1987 and shall not affect any proceedings under the Copyright Act 1911, whether instituted before or after that date.

[Aust. 1968, s. 228]

Offences

227. For the purposes of Division 5 of Part V, the definition of “infringing copy” in section 7 shall apply as if any reference in that definition to copyright included a reference to copyright under the Copyright Act 1911.

[Aust. 1968, s. 229]

Limitation of actions

228. Section 142 shall not apply in relation to an infringement of copyright under the Copyright Act 1911 or to an article made, or imported into Singapore, before 10th April 1987.

[Aust. 1968, s. 230]

Restriction of importation of printed copies of works

229. (*Omitted*)

References and applications to Tribunal in relation to licence schemes

230. —(1) Part VII shall apply in relation to licence schemes formulated before 10th April 1987 in like manner as it applies in relation to licence schemes formulated on or after that date, but, for the purposes of the application of that Part in relation to licence schemes formulated before that date, any reference in

that Part to copyright includes a reference to copyright under the Copyright Act 1911.

[S 107/87]

(2) Any reference in section 163 to a refusal or failure to grant or procure the grant of a licence, or to a proposal that a licence should be granted, shall not include a reference to a refusal or failure that occurred, or to a proposal that was made, before 10th April 1987.

[Aust. 1968, s. 232]

Duration of Government copyright in photographs

231. Section 197 (4) shall apply in relation to photographs taken before 10th April 1987 as if subsection (4A) of that section were omitted.

[Aust. 1968, s. 233]

Duration of Government copyright in recordings

232. Section 197 (5) shall apply in relation to sound recordings made before 10th April 1987 as if the reference in that section to the expiration of the calendar year in which the recording is first published were a reference to the expiration of the calendar year in which the recording was made.

[Aust. 1968, s. 234]

Government copyright in films

233. —(1) Section 197 (5) shall not apply in relation to cinematograph films made before 10th April 1987.

(2) Where section 197 (5) does not apply in relation to a cinematograph film by reason of subsection (1) —

(a) if the film was an original dramatic work as defined by section 205 — section 197 (1), (2) and (3), shall apply, in relation to that work in accordance with section 221 (1); and

(b) section 197 (1), (2) and (3), as modified by section 231, shall apply in relation to photographs forming part of the film in like manner as they apply in relation to photographs not forming part of a cinematograph film.

[Aust. 1968, s. 235]

Works made or published by international organisations

234. —(1) Section 185 (3) shall not apply in relation to works made before 10th April 1987.

(2) Section 185 (4) shall not apply in relation to works first published before 10th April 1987.

[Aust. 1968, s. 236]

Subject-matter, other than original works, made or published by international organisations

235. —(1) Section 185 (3) shall not apply in relation to sound recordings or cinematograph films made before 10th April 1987.

[S 107/87]

(2) Section 185 (4) shall not apply in relation to sound recordings or cinematograph films first published before 10th April 1987.

(3) Section 185 (5) shall not apply in relation to an edition published before 10th April 1987.

[Aust. 1968, s. 237]

False attribution of authorship of work

236. —(1) It is a breach of the duty imposed on a person by section 188 if the person does, on or after 10th April 1987, any of the acts mentioned in subsection (1) (b) and (c) of that section in relation to a work notwithstanding that the name concerned was inserted or affixed before that date.

[52/2004]

(1A) It is a breach of the duty imposed on a person by section 188 if the person does, on or after 1st January 2005, any of the acts mentioned in subsection (1) (b) and (c) of that section in relation to a recording of a performance, notwithstanding that the name concerned was inserted or affixed before that date.

[52/2004]

(2) Subject to subsection (1), Part IX shall not apply in relation to acts done before 10th April 1987.

(2A) Subject to subsection (1A), Part IX shall not apply in relation to acts done before 1st January 2005 in respect of a recording of a performance.

(3) In this section, "name" includes initials or a monogram.

[Aust. 1968, s. 195AE]

Assignments and licences

237. —(1) Subject to this section, where copyright subsists in a work by virtue of this Act, any document that was made, or event that occurred, before 10th April 1987, being a document or event that had any operation affecting the ownership of, or creating, transferring or terminating an interest, right or licence in respect of, copyright in the work under the Copyright Act 1911 or would have had such an operation if that Act had continued in force, shall have the like operation in relation to the copyright in the work under this Act.

(2) If the operation of a document to which subsection (1) applies was or would have been limited to a period specified in the document, the document shall not have any operation in relation to the copyright under this Act, except insofar as that period extends after 10th April 1987.

(3) For the purposes of the operation of a document in accordance with this section —

(a) expressions used in the document shall have the same respective meanings as they had immediately before 10th April 1987, whether or not those expressions have different meanings for the purposes of this Act; and

(b) section 195 (1) shall not apply.

(4) Without prejudice to the generality of subsection (1), where the author of a work that was made before 10th April 1987 was the first owner of the copyright in the work —

(a) any assignment of the copyright, or any grant of an interest in the copyright, made by the author (otherwise than by will) after the commencement of the Copyright Act 1911 and before 10th April 1987, being an assignment or grant that has effect in relation to copyright in the work under this Act by virtue of subsection (1), shall not operate to vest in the assignee or grantee any rights with respect to the copyright in the work after the expiration of 25 years after the date of the death of the author;

(b) on the death of the author, the reversionary interest in the copyright expectant on the termination of that period shall devolve, notwithstanding any agreement to the contrary, on his legal personal representative as part of his estate; and

(c) any agreement entered into by the author as to the disposition of that reversionary interest is of no force or effect.

(4A) Nothing in subsection (4) shall be taken to apply to the assignment of the copyright in a collective work or a licence to publish a work or a part of a work as part of a collective work.

[S 107/87]

(5) In subsection (4), expressions that are defined by section 205 have the meanings respectively given to those expressions by that section and shall not have the meanings, if any, respectively given to those expressions by Part II.

(6) Subsections (1) to (5) shall apply in relation to copyright under this Act in a sound recording or in a cinematograph film in like manner as they apply in relation to copyright in a work but a reference in those subsections to the copyright under the Copyright Act 1911 shall —

(a) in the application of those subsections in relation to a sound recording — be read as a reference to the copyright under that Act in records embodying the recording; and

(b) in the application of those subsections in relation to a cinematograph film — be read as a reference to any copyright under that Act in the film (insofar as it constituted a dramatic work for the purposes of that Act) or in photographs forming part of the film.

[Aust. 1968, s. 239]

Bequests

238. —(1) Section 196 shall not apply in relation to a bequest contained in the will of a testator who died before 10th April 1987.

[S 107/87]

(2) Where —

(a) an author has died before 10th April 1987;

(b) a person has acquired, under the will of the author, the ownership of a manuscript of a work by the author; and

(c) the work —

(i) has not been published;

(ii) in the case of a dramatic or musical work — has not been performed in public; and

(iii) in the case of a lecture — has not been delivered in public,

the ownership by that person of the manuscript shall be evidence that that person is the owner of the copyright in the work.

(3) In subsection (1), expressions that are defined by section 205 shall have the meanings respectively given to those expressions by that section and shall not have the meanings, if any, respectively given to those expressions by Part II.

[Aust. 1968, s. 240]

Existing computer programs

239. —(1) The Copyright Act 1911 shall apply to a computer program made before 10th April 1987 as it applies in relation to a literary work and shall so apply whether or not copyright would subsist in that program apart from this Act.

(2) Where, by virtue of subsection (1), copyright subsists under the Copyright Act 1911 in a computer program that was made before 10th April 1987, nothing done in relation to the computer program before that date shall be taken to constitute an offence under the repealed Copyright Act (Cap. 187, 1970 Ed.) or an infringement of that copyright.

(3) For the purposes of this section, a computer program the making of which extends over a period shall be deemed not to have been made before 10th April 1987 unless the making of it was completed before that date.

[S 107/87]

Division 5 — Works made before 1st July 1912

Interpretation of this Division

240. In this Division, "right conferred by the Copyright Act 1911", in relation to a work, means a right that, by virtue of section 24 of the Copyright Act 1911, was

conferred in place of a right that subsisted immediately before the commencement of that Act.

[Aust. 1968, s. 243]

Application

241. This Division shall apply to works made before 1st July 1912.

[Aust. 1968, s. 244]

Rights conferred by Copyright Act 1911

242. Notwithstanding anything in Division 2, section 27 shall not apply to a work to which this Division applies unless a right conferred by the Copyright Act 1911 subsisted in the work immediately before 10th April 1987.

[Aust. 1968, s. 245]

Performing rights

243. —(1) Where the right conferred by the Copyright Act 1911 in relation to a dramatic or musical work to which this Division applies did not include the sole right to perform the work in public, then, copyright, insofar as it subsists in the work by virtue of this Act, shall not include the performing rights in relation to the work.

(2) Where the right conferred by the Copyright Act 1911 in relation to a dramatic or musical work to which this Division applies consisted only of the sole right to perform the work in public, then, copyright, insofar as it subsists in the work by virtue of this Act, shall consist only of the performing rights in relation to the work.

(3) For the purposes of this section, the performing rights, in relation to a work, are —

- (a) the exclusive right to perform the work, or an adaptation of the work, in public;
- (b) the exclusive right to broadcast the work or an adaptation of the work; and
- (c) the exclusive right to cause the work, or an adaptation of the work, to be in a cable programme service.

[Aust. 1968, s. 246]

Contributions to periodicals

244. Where —

(a) a work to which this Division applies (in this section referred to as the relevant work) consists of an essay, article or item forming part of, and first published in, a review, magazine or other periodical or work of a like nature; and

(b) immediately before 10th April 1987, a right of publishing the relevant work in a separate form subsisted by virtue of the note to the First Schedule to the Copyright Act 1911,

copyright subsisting in the relevant work by virtue of this Act shall be subject to that right of publishing the relevant work in a separate form.

[S 107/87]

[Aust. 1968, s. 247]

Assignments and licences

245. —(1) Without prejudice to the generality of section 237 (1), where —

(a) the author of a work to which this Division applies had, before the commencement of the Copyright Act 1911, made an assignment or grant of a kind referred to in paragraph (a) of the proviso to section 24 (1) of that Act (referred to in this section as paragraph (a) of the proviso); and

(b) copyright subsists in the work by virtue of this Act,

subsections (2), (3) and (4) shall have effect.

(2) If, before 10th April 1987, an event occurred or a notice was given, being an event or notice that, in accordance with paragraph (a) of the proviso, had any operation affecting the ownership of the right conferred by the Copyright Act 1911 in relation to the work or creating, transferring or terminating an interest, right or licence in respect of that right, that event or notice shall have the like operation in relation to the copyright in the work under this Act.

(3) Any right that, at a time after 10th April 1987, would, by virtue of paragraph (a) of the proviso, have been exercisable in relation to the work or in relation to the right conferred by the Copyright Act 1911, if this Act had not been enacted, shall be exercisable in relation to the work or in relation to the copyright subsisting in the work under this Act, as the case may be.

(4) If, in accordance with paragraph (a) of the proviso, the right conferred by the Copyright Act 1911 would have reverted to the author or his personal

representatives on the date referred to in that paragraph, and that date occurs after 10th April 1987, then on that date —

(a) the copyright in the work under this Act shall revert to the author or his personal representatives, as the case may be; and

(b) any interest of any other person in that copyright that subsists on that date by virtue of any document made before the commencement of the Copyright Act 1911 shall cease.

[Aust. 1968, s. 248]

PART XII

PERFORMERS' PROTECTION

Interpretation of this Part

246. —(1) In this Part —

"action" means a proceeding of a civil nature between parties and includes a counterclaim;

"authorised" , in relation to a recording of a performance, means made with the authority of the performer;

"direct" , in relation to a recording of a performance, means made —

(a) directly from the live performance; or

(b) from a broadcast or re-broadcast of, or a cable programme that includes, the performance;

"electronic copy" , in relation to an electronic recording, means a copy in an electronic form of the recording;

"electronic recording" means a recording in an electronic form, whether it is a direct recording or a copy thereof;

"exempt recording" means —

(a) a direct or an indirect recording of a performance made solely for the purpose of the private and domestic use of the person who made it;

(b) a direct or an indirect recording of a performance made solely for the purpose of use in scientific research;

- (c) a direct or an indirect recording of a performance made by, or on behalf of, the body administering an educational institution solely for the educational purposes of that institution or of another educational institution;
- (d) a direct or an indirect recording of a performance made solely for the purposes of setting or answering the questions in an examination or communicating the questions to the candidates;
- (e) a direct or an indirect recording of a performance made in the course of instruction, or preparation for instruction, in the making of a cinematograph film or a sound-track associated with the visual images forming part of a cinematograph film, if the recording is done by a person giving or receiving such instruction;
- (f) a direct or an indirect recording of a performance made by, or on behalf of, the body administering an institution assisting handicapped readers solely for use by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake, or for the purpose of otherwise instructing himself on any matter;
- (g) a direct or an indirect recording of a performance made by, or on behalf of, the body administering an institution assisting intellectually handicapped persons solely for the purpose of the provision, whether by the institution or otherwise, of assistance to intellectually handicapped persons;
- (h) a direct or an indirect recording of a performance made —
 - (i) for the purpose of, or in relation to, the reporting of news or current affairs; or
 - (ii) for the purpose of criticism or review;
- (i) a direct or an indirect recording of a performance made —
 - (i) for the purpose of judicial proceedings;
 - (ii) for the purpose of seeking professional advice from an advocate and solicitor;or
 - (iii) for the purpose of, or in the course of, the giving of professional advice by an advocate and solicitor;
- (j) a direct or an indirect recording of a performance made by a broadcaster who has the authority of the performer to broadcast the performance, being a recording made solely for the purpose of making that broadcast;

(k) a direct or an indirect recording of a performance made by a person who reasonably believes, due to a fraudulent or innocent misrepresentation made to the person, that the performer has authorised the making of the recording by the person;

(l) a copy of a recording referred to in paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (j), being a copy made solely for a purpose referred to in any of those paragraphs;

(m) a copy of a recording referred to in paragraph (j), being a copy made solely for the purpose referred to in that paragraph;

(n) a copy of a recording referred to in paragraph (k), being a copy made —

(i) by a person who believes, due to a fraudulent or innocent misrepresentation made to the person, that the performer has authorised the making of the copy; or

(ii) solely for a purpose referred to in paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (i); or

(o) a copy of an authorised recording of a performance;

"monetary relief" means damages, an account of profits or statutory damages;

"network service provider" —

(a) for the purposes of section 252A, means a person who provides services relating to, or provides connections for, the transmission or routing of data; and

(b) for the purposes of sections 252B to 252CC and 252CE, means a person who provides, or operates facilities for, online services or network access and includes a person referred to in paragraph (a),

but does not include such person or class of persons as the Minister may prescribe;

"performance" means —

(a) a performance (including an improvisation) of a dramatic work, or part of such a work, including such a performance given with the use of puppets;

(b) a performance (including an improvisation) of a musical work or part of such a work;

(c) the reading, recitation or delivery of a literary work, or part of such a work, or the recitation or delivery of an improvised literary work;

(d) a performance of a dance; or

(e) a performance of a circus act or a variety act or any similar presentation or show,
being a live performance given in Singapore or by one or more qualified persons, whether in the presence of an audience or otherwise;
"primary network" , in relation to a network service provider, refers to a network controlled or operated by or for the network service provider;
"protection period" , in relation to a performance, means the period beginning on the day when the performance is given and ending at the end of the period of 70 calendar years after the calendar year in which the performance is given;
"qualified person" means a citizen of Singapore or a person resident in Singapore;
"recording" means a sound recording other than an exempt recording;
"routing" means directing or choosing the means or routes for the transmission of data;
"sound recording" includes an article in which sounds are embodied;
"unauthorised" , in relation to a recording of a performance, means made without the authority of the performer;
"unauthorised use" has the meaning given to it in section 252.

[6/98; 38/99;21/2004;52/2004]

(2) The following shall be taken not to be performances for the purposes of this Part:

- (a) a performance referred to in section 23 (1);
- (b) a reading, recital or delivery of any item of news and information;
- (c) a performance of a sporting activity;
- (d) a participation in a performance as a member of an audience;
- (e) a performance in a National Day Parade in Singapore; or
- (f) any other performance as may be prescribed by the Minister.

[6/98]

(3) In this Part —

- (a) a reference to the doing of an act in relation to a performance shall be read as including a reference to the doing of that act in relation to a substantial part of the performance;

(b) a reference to the doing of an act in relation to a recording of a performance shall be read as including a reference to the doing of that act in relation to a recording of a substantial part of the performance;

(c) a reference to the doing of an act in relation to a performance, or a recording of a performance, with the authority of the performer is, in the case of 2 or more performers, a reference to the doing of the act where each of the performers has authorised the doing of the act; and

(d) a reference to the doing of an act in relation to a performance, or a recording of a performance, without the authority of the performer is, in the case of 2 or more performers, a reference to the doing of the act where at least one of the performers has not authorised the doing of the act.

[6/98]

[Aust. 1968, s. 248A]

Educational purposes

247. Without limiting the meaning of the expression "educational purposes" in paragraph (c) of the definition of "exempt recording" in section 246 (1), a recording or a copy of such a recording, shall be taken to have been made for the educational purposes of an educational institution if it is made —

(a) for use in connection with a particular course of instruction provided by the institution; or

(b) for inclusion in the collection of a library of the institution.

[6/98]

[Aust. 1968, s. 248B]

Exempt recordings cease to be exempt recordings in certain circumstances

248. —(1) If any recording of a performance, being a recording that is an exempt recording under paragraph (j) of the definition of "exempt recording" in section 246 (1), is not destroyed —

(a) before the expiration of the period of 6 months or, in the case of a recording made by a non-profit organisation solely for its own broadcast, 2 years, commencing on the day on which the recording is first used for broadcasting the performance; or

(b) before the expiration of such further period, if any, as is agreed between the maker of the recording and the performer of the performance, the recording shall, at the end of that period, cease to be an exempt recording.

[38/99]

(2) If any copy of a recording of a performance, being an exempt recording under paragraph (m) of the definition of "exempt recording" in section 246 (1), is not destroyed —

(a) before the expiration of the period of 6 months or, in the case of a copy made by a non-profit organisation solely for its own broadcast, 2 years, commencing on the day on which the copy is first used for broadcasting the performance; or

(b) before the expiration of such further period, if any, as is agreed between the maker of the copy and the performer of the performance, the copy of the recording shall, at the end of that period, cease to be an exempt recording.

[38/99]

(3) A recording or a copy of such a recording that is an exempt recording because it was made for a purpose referred to in paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (i) of the definition of "exempt recording" in section 246 (1), ceases to be an exempt recording if it is used for any other purpose without the authority of the performer.

[6/98]

[Aust. 1968, s. 248C]

Private and domestic use

249. For the purposes of this Part, a recording or a copy of such a recording shall be taken not to have been made for the private and domestic use of the person who made it if it is made for the purpose of —

- (a) selling it, letting it for hire, or by way of trade offering or exposing it for sale or hire;
- (b) distributing it for the purposes of trade;
- (c) by way of trade exhibiting it in public;
- (d) broadcasting it or including it in a cable programme service; or

(e) causing it to be heard in public.

[6/98;38/99]

References to inclusion of performance in cable programme service

250. A reference in this Part to the inclusion of a performance or a recording thereof in a cable programme service is a reference to the inclusion of the performance or recording in a programme of such a service by the person providing that service.

[6/98;38/99]

Application

251. —(1) Subject to the other provisions of this Part, this Part shall apply to an act done on or after 16th April 1998 in relation to a performance given before, on or after that date.

[6/98;38/99]

(2) Nothing in this Part shall affect any copyright subsisting in a work that is performed or in any sound recording, cinematograph film or broadcast of a performance, or any other right or obligation arising otherwise than under this Part.

[6/98]

[Aust. 1968, s. 248F]

What constitutes unauthorised use

252. —(1) A person makes an unauthorised use of a performance if the person, at any time during the protection period of the performance and without the authority of the performer —

(a) makes a direct or an indirect recording of the performance in any manner or medium;

(b) communicates the live performance to the public;

(c) makes a copy of a recording of the performance that the person knows, or ought reasonably to know, is an unauthorised recording;

(d) makes a copy of an exempt recording of the performance, being a copy that the person knows, or ought reasonably to know, is not itself an exempt recording;

(e) causes the performance to be seen and heard, or seen or heard, live in public;

(f) publishes the recording of the performance if it is unpublished; or

(g) makes available a recording of the performance to the public (on a network or otherwise) in such a way that the recording may be accessed by any person from a place and at a time chosen by him.

[6/98;52/2004]

(1A) A person makes an unauthorised use of a performance if the person, at any time on or after 15th December 1999 and during the protection period of the performance, and without the authority of the performer —

(a) sells, lets for hire, or by way of trade exhibits in public or offers or exposes for sale or hire a recording of the performance that the person knows, or ought reasonably to know, is an unauthorised recording;

(b) distributes a recording of the performance for the purposes of trade, being a recording that the person knows, or ought reasonably to know, is an unauthorised recording; or

(c) imports a recording of the performance into Singapore for the purpose of —

(i) selling it, letting it for hire, or by way of trade exhibiting it in public or offering or exposing it for sale or hire; or

(ii) distributing it for the purposes of trade,
being a recording that the person knows, or ought reasonably to know, is an unauthorised recording.

[38/99]

(1B) A reference in this section to the making of a copy of a recording of a performance includes a reference to the making of a copy which is transient or is incidental to some other use of the recording.

[38/99]

(2) This section shall apply only to acts done in Singapore.

[38/99]

[Aust. 1968, s. 248G]

Transmission, routing and provision of connections

252A. —(1) The court shall not grant any monetary relief or, except as provided for in section 252CB, make any order against a network service provider for any unauthorised use of any performance, the protection period of which has not expired, that occurs by reason of —

(a) the transmission or routing by the network service provider of, or the provision of connections by the network service provider for, an electronic recording of the performance through the network service provider's primary network; or

(b) any transient storage by the network service provider of an electronic recording of the performance in the course of such transmission, routing or provision of connections,

if the network service provider satisfies the conditions set out in subsection (2).

[52/2004]

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

(a) the transmission of the electronic recording of the performance was initiated by or at the direction of a person other than the network service provider;

(b) the transmission, routing, provision of connections or storage is carried out through an automatic technical process without any selection of the electronic recording of the performance by the network service provider;

(c) the network service provider does not select the recipients of the electronic recording of the performance except as an automatic response to the request of another person; and

(d) the network service provider does not make any substantive modification (other than any modification made as part of a technical process) to the content of the electronic recording of the performance during the transmission of the electronic recording of the performance through the primary network.

[52/2004]

System caching

252B. —(1) The court shall not grant any monetary relief or, except as provided for in section 252CB, make any order against a network service provider for any unauthorised use of any performance, the protection period of which has not expired, that occurs by reason of the making by the network service provider of an electronic recording of the performance (referred to in this section as the cached copy) on the network service provider's primary network —

(a) from another electronic recording of the performance made available on a network (referred to in this section as the originating network);

- (b) through an automatic process;
 - (c) in response to an action by a user of the primary network; and
 - (d) in order to facilitate efficient access to the performance by that user or other users,
- if the network service provider satisfies the conditions set out in subsection (2).

[52/2004]

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

(a) the network service provider does not make any substantive modification (other than any modification made as part of a technical process) to the content of the cached copy of the electronic recording of the performance during the transmission of the cached copy of the electronic recording of the performance to users of the primary network or another network;

(b) if the network service provider is furnished in the prescribed manner with a notice in, or substantially in accordance with, the prescribed form relating to the cached copy of the electronic recording of the performance —

(i) purportedly made by the performer of the performance or under the performer's authority; and

(ii) stating the prescribed matters,

the network service provider expeditiously takes reasonable steps to remove or disable access to the cached copy of the electronic recording of the performance on the primary network; and

(c) the network service provider satisfies such other conditions as the Minister may prescribe in relation to —

(i) access to the cached copy of the electronic recording of the performance by users of the primary network or another network;

(ii) the refreshing, reloading or updating of the cached copy of the electronic recording of the performance; and

(iii) non-interference with technology used at the originating network to obtain information about the use of any electronic recording of any performance on the originating network, being technology that is consistent with industry standards in Singapore.

[52/2004;22/2005]

Storage and information location

252C. —(1) The court shall not grant any monetary relief or, except as provided for in section 252CB, make any order against a network service provider for any infringement of copyright in any performance, the protection period of which has not expired, that occurs by reason of —

- (a) the storage, at the direction of a user of the network service provider's primary network, of an electronic recording of the performance on the primary network, if the network service provider satisfies the conditions referred to in subsection (2); or
- (b) the network service provider referring or linking a user of any network to an online location on a network (referred to in this section as the originating network), being a location at which an electronic recording of the performance is made available, by the use of —
 - (i) an information location tool such as a hyperlink or directory; or
 - (ii) an information location service such as a search engine,if the network service provider satisfies the conditions referred to in subsection (4).

[52/2004]

(2) The conditions referred to in subsection (1) (a) are that —

- (a) the network service provider does not receive any financial benefit directly attributable to any unauthorised use of the performance that occurs in, or in the course of, making available the electronic recording of the performance on the primary network, provided that the network service provider has the right and ability to control the unauthorised use of the performance;
- (b) if the network service provider —
 - (i) acquires actual knowledge that there has been an unauthorised use of the performance in, or in the course of, making available the electronic recording of the performance on the primary network;
 - (ii) acquires knowledge of such facts or circumstances which would lead inevitably to the conclusion that there has been an unauthorised use of the performance in, or in the course of, making available the electronic recording of the performance on the primary network; or

(iii) is furnished in the prescribed manner with a notice in, or substantially in accordance with, the prescribed form relating to the electronic recording of the performance on the primary network —

(A) purportedly made by the performer of the performance or under the performer's authority; and

(B) stating the prescribed matters,

the network service provider expeditiously takes reasonable steps to remove or disable access to the electronic recording of the performance on the primary network; and

(c) the network service provider has designated a representative to receive any notice referred to in paragraph (b) (iii) and published the prescribed information on the designated representative in the prescribed manner.

[52/2004;22/2005]

(3) For the purposes of subsection (2), a notice purportedly made by the performer of the performance or under the performer's authority which is not a notice referred to in subsection (2) (b) (iii) shall not be considered in determining whether the network service provider has acquired any knowledge referred to in subsection (2) (b) (i) or (ii).

[22/2005]

(4) The conditions referred to in subsection (1) (b) are that —

(a) the network service provider does not receive any financial benefit directly attributable to any unauthorised use of the performance that occurs in, or in the course of, making available the electronic recording of the performance on the originating network, provided that the network service provider has the right and ability to control the unauthorised use of the performance;

(b) if the network service provider —

(i) acquires actual knowledge that there has been an unauthorised use of the performance in, or in the course of, making available the electronic recording of the performance on the originating network;

(ii) acquires knowledge of such facts or circumstances which would lead inevitably to the conclusion that there has been an unauthorised use of the performance in,

or in the course of, making available the electronic recording of the performance on the originating network; or

(iii) is furnished in the prescribed manner with a notice in, or substantially in accordance with, the prescribed form relating to the electronic recording of the performance on the originating network —

(A) purportedly made by the performer of the performance or under the performer's authority; and

(B) stating the prescribed matters,

the network service provider expeditiously takes reasonable steps to disable access to the electronic recording of the performance on the originating network, and to remove or disable access to any electronic recording of the performance (being a copy made from the electronic recording of the performance on the originating network and of which the network service provider has actual knowledge) on the primary network; and

(c) the network service provider has designated a representative to receive any notice referred to in paragraph (b) (iii) and published the prescribed information on the designated representative in the prescribed manner.

[52/2004;22/2005]

(5) For the purposes of subsection (4), a notice purportedly made by the performer of the performance or under the performer's authority which is not a notice referred to in subsection (4) (b) (iii) shall not be considered in determining whether the network service provider has acquired any knowledge referred to in subsection (4) (b) (i) or (ii).

[22/2005]

(6) For the purposes of subsections (2) (a) and (4) (a), in determining whether a financial benefit is directly attributable to the unauthorised use of the performance, the court shall have regard to —

(a) industry practice in relation to the charging of services by network service providers;

(b) whether the financial benefit was greater than the benefit that would usually result from charging in accordance with accepted industry practices; and

(c) all other matters that the court considers relevant.

[22/2005]

Exemption of network service provider from liability for removal of copy, etc., from network

252CA. —(1) Notwithstanding anything to the contrary in any law (written or otherwise), a network service provider shall not be subject to any liability under any rule of law in respect of any action taken in good faith in relation to —

(a) the removal of an electronic recording of any performance from his primary network; or

(b) the disabling of access to an electronic recording of any performance on his primary network or another network,

if —

(i) such removal or disabling was done in reliance on any notice referred to in section 252B (2) (b) or 252C (2) (b) (iii) or (4) (b) (iii) or any knowledge referred to in section 252C (2) (b) (i) or (ii) or (4) (b) (i) or (ii); and

(ii) in the case of any removal or disabling done in reliance on any notice referred to in section 252C (2) (b) (iii) or (4) (b) (iii) or any knowledge referred to in section 252C (2) (b) (i) or (ii) or (4) (b) (i) or (ii), the conditions referred to in subsection (2) are satisfied.

[52/2004]

(2) The conditions referred to in subsection (1) (ii) are that —

(a) after such removal or disabling, the network service provider expeditiously takes reasonable steps —

(i) to notify the person who made available the electronic recording of the performance on the network of this; and

(ii) in the case of any removal or disabling done in reliance on any notice referred to in section 252C (2) (b) (iii) or (4) (b) (iii), to provide that person with a copy of that notice; and

(b) where the network service provider is furnished in the prescribed manner, within the prescribed time, with a notice in, or substantially in accordance with, the prescribed form purportedly made by the person who made available the electronic recording of the performance on the network, or under that person's

authority, stating the prescribed matters (referred to in this section as the counter notice) —

(i) in the case of any removal or disabling done in reliance on any notice referred to in section 252C (2) (b) (iii) or (4) (b) (iii) —

(A) subject to any other written law relating to privacy or data protection, the network service provider expeditiously provides the person who furnished the notice referred to in section 252C (2) (b) (iii) or (4) (b) (iii) with a copy of the counter notice;

(B) the network service provider expeditiously notifies the person who furnished the notice referred to in section 252C (2) (b) (iii) or (4) (b) (iii) that the network service provider will take reasonable steps to restore the electronic recording of the performance to the network or to restore access to that electronic recording, as the case may be, if it is technically and practically feasible to do so, unless, within 10 working days after the date of such notification —

(BA) court proceedings are commenced by the performer of the performance, or under the performer's authority, to prevent that electronic recording or the access to that electronic recording, as the case may be, from being restored; and

(BB) the network service provider is informed in writing of the court proceedings; and

(C) the network service provider takes reasonable steps to restore the electronic recording of the performance to the network or to restore access to that electronic recording, as the case may be, if it is technically and practically feasible to do so, not less than 10, nor more than 14, working days after the date of the notification referred to in sub-paragraph (B), unless, within 10 working days after that date —

(CA) court proceedings are commenced by the performer of the performance, or under the performer's authority, to prevent that electronic recording or the access to that electronic recording, as the case may be, from being restored; and

(CB) the network service provider is informed in writing of the court proceedings; or

(ii) in the case of any removal or disabling done in reliance on any knowledge referred to in section 252C (2) (b) (i) or (ii) or (4) (b) (i) or (ii), the network service

provider takes reasonable steps to restore the electronic recording of the performance to the network or to restore access to that electronic recording, as the case may be, if it is technically and practically feasible to do so, not less than 10, nor more than 14, working days after the date the network service provider is furnished with the counter notice, unless, within 10 working days after that date

-
- (A) court proceedings are commenced by the performer of the performance, or under the performer's authority, to prevent that electronic recording or the access to that electronic recording, as the case may be, from being restored; and
 - (B) the network service provider is informed in writing of the court proceedings.

[22/2005]

(3) Subsection (1) shall apply whether or not it is ultimately determined that any relevant act that was carried out constitutes an unauthorised use of the performance under this Act.

[52/2004]

(4) Notwithstanding anything to the contrary in any law (written or otherwise), a network service provider shall not be subject to any liability under any rule of law in respect of any action taken in good faith in relation to —

- (a) the restoration of an electronic recording of any performance to his primary network; or
- (b) the restoration of access to an electronic recording of any performance on any network,

if such restoration was done in reliance on any counter notice referred to in subsection (2) (b).

[52/2004;22/2005]

(5) A network service provider shall not be treated as having authorised the doing of any act which is an unauthorised use of a performance under this Act solely by reason of the occurrence of only one of the following matters:

- (a) the network service provider has provided a facility which was used by another person to do that act;
- (b) the network service provider has received any notice referred to in section 252C (2) (b) or 252C (2) (b) (iii) or (4) (b) (iii) in respect of that act;

(c) the network service provider has acquired any knowledge referred to in section 252C (2) (b) (i) or (ii) or (4) (b) (i) or (ii) in respect of that act.

[22/2005]

Relief which court may grant

252CB. —(1) The types of relief that the court may grant against a network service provider, if the court is satisfied that section 252A (1) applies to the network service provider, shall be limited to either or both of the following:

- (a) an order requiring the network service provider to take reasonable steps to disable access to an online location that is physically situated outside Singapore;
- (b) an order requiring the network service provider to terminate a specified account.

[52/2004]

(2) The types of relief that the court may grant against a network service provider, if the court is satisfied that section 252B (1) or 252C (1) applies to the network service provider, shall be limited to one or more of the following:

- (a) an order requiring the network service provider —
 - (i) to remove an unauthorised electronic recording of the performance from the network service provider's primary network; or
 - (ii) to disable access to an unauthorised electronic recording of the performance on the primary network or another network;
- (b) an order requiring the network service provider to terminate a specified account;
- (c) such other order or orders as may be necessary, if that order is, or those orders are, the least burdensome to the network service provider among comparatively effective non-monetary orders.

[52/2004]

(3) When making an order under subsection (1) or (2), the court shall have regard to —

- (a) the harm that has been or may foreseeably be caused to the plaintiff;
- (b) the burden that the making of the order will place on the network service provider;
- (c) the technical feasibility of complying with the order;

- (d) the effectiveness of the order;
- (e) any possible adverse effect on the business or operations of the network service provider;
- (f) whether some other comparatively effective order would be less burdensome; and
- (g) all other matters which it considers relevant.

[52/2004]

Evidence of compliance with conditions

252CC. If, in an action relating to this Part, a network service provider adduces evidence, as prescribed, that suggests that he has complied with a condition —

- (a) referred to in section 252A (2), 252B (2) or 252C (2) or (4); or
- (b) prescribed in any regulations made under section 252CE,

the court shall presume, in the absence of evidence to the contrary, that the network service provider has complied with that condition.

[52/2004]

Maker of false notice guilty of offence and liable in damages

252CD. —(1) A person who, in making a notice under section 252B (2) (b), 252C (2) (b) (iii) or (4) (b) (iii) or 252CA (2) (b), makes any statement which is false, which he knows is false or does not believe to be true, and which touches any point material to the object of the notice —

- (a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years; and
- (b) shall also be liable in damages to any person who suffers any loss or damage as a result of the making of that notice for any such loss or damage that is reasonably foreseeable as likely to result from the making of that notice.

[52/2004]

(2) Subsection (1) shall apply whether or not the statement is made in Singapore, and if a person makes the statement outside Singapore, he may be dealt with under subsection (1) (a) as if the offence were committed in Singapore.

[52/2004]

Regulations

252CE. —(1) The Minister may make regulations prescribing anything required or authorised to be prescribed under sections 252A to 252CD.

[52/2004]

- (2) Without prejudice to the generality of subsection (1), the regulations may —
- (a) prescribe the procedure or requirements for the notices to be furnished under sections 252B (2) (b), 252B (2) (b) (iii) and (4) (b) (iii) and 252CA (2) (b), including the forms of and information to be contained in such notices, the manner of sending such notices, and the manner of verification of statements in such notices; and
 - (b) prescribe other conditions which a network service provider must comply with in order to benefit from the provisions in section 252A to 252CD.

[52/2004]

Effect of application of sections 252A to 252CD

252CF. —(1) Sections 252A to 252CD do not limit the operation of the other provisions of this Part in relation to determining whether there has been an unauthorised use of a performance.

[52/2004;22/2005]

- (2) Nothing in sections 252A to 252CD shall be construed as making the applicability of sections 252A, 252B, 252C and 252CB conditional on —
- (a) a network service provider monitoring its service or affirmatively seeking facts indicating any unauthorised use of any performance, except to the extent consistent with any standard technical measure; or
 - (b) a network service provider gaining access to, removing or disabling access to any electronic recording of any performance in any case in which such conduct is prohibited by law.

[22/2005]

- (3) In subsection (2), "standard technical measure" means any technical measure accepted in Singapore that —
- (a) is used to identify or protect recordings or performances;
 - (b) has been developed through an open, voluntary process by a broad consensus of performers and network service providers;

(c) is available to any person on reasonable and non-discriminatory terms; and
(d) does not impose substantial costs on network service providers or substantial burdens on their primary networks.

[22/2005]

User caching

252D. Notwithstanding section 252, the making of a transient and incidental electronic copy of a recording of a performance, being an electronic recording made available on a network, does not constitute an unauthorised use of the performance if the making of the copy is required for the viewing, listening or utilisation of the performance by the user of this or another network.

[38/99;22/2005]

Action for unauthorised use

253. —(1) A performer may bring an action for an unauthorised use of his performance.

[6/98]

(1A) An action shall not be brought for an unauthorised use of a performance after the expiration of 6 years from the time when the unauthorised use took place.

[52/2004]

(2) Subject to the provisions of this Act, in an action for unauthorised use of a performance, the types of relief that the court may grant include the following:

- (a) an injunction (subject to such terms, if any, as the court thinks fit);
- (b) damages;
- (c) an account of profits;
- (d) where the plaintiff has elected for an award of statutory damages in lieu of damages or an account of profits, statutory damages of —
 - (i) not more than \$10,000 for each performance in respect of which there has been an unauthorised use; but
 - (ii) not more than \$200,000 in the aggregate, unless the plaintiff proves that his actual loss from such infringement exceeds \$200,000.

[52/2004]

(2A) When the court awards any damages under subsection (2) (b), the court may also make an order under subsection (2) (c) for an account of any profits attributable to the unauthorised use that have not been taken into account in computing the damages.

[52/2004]

(2B) Except as provided for in subsection (2A), the types of relief referred to in subsection (2) (b), (c) and (d) are mutually exclusive.

[52/2004]

(3) Where, in an action for an unauthorised use of a performance —

(a) the unauthorised use is established; and

(b) the court is satisfied that it is proper to do so, having regard to —

(i) the flagrancy of the use;

(ii) any benefit shown to have accrued to the defendant by reason of the use;

and

(iii) all other relevant matters,

the court may, in assessing damages under subsection (2) (b), award such additional damages as it considers appropriate in the circumstances.

[6/98;52/2004]

(3A) In awarding statutory damages under subsection (2) (d), the court shall have regard to —

(a) the nature and purpose of the unauthorised use, including whether the unauthorised use was of a commercial nature or otherwise;

(b) the flagrancy of the unauthorised use;

(c) whether the defendant acted in bad faith;

(d) any loss that the plaintiff has suffered or is likely to suffer by reason of the unauthorised use;

(e) any benefit shown to have accrued to the defendant by reason of the unauthorised use;

(f) the conduct of the parties before and during the proceedings;

(g) the need to deter other similar instances of unauthorised use; and

(h) all other relevant matters.

[52/2004]

(4) The court may, in addition to any relief granted under subsections (2) and (3), order any unauthorised recording of the performance, or any article which has been used for making unauthorised recordings of the performance, in the possession of the defendant or before the court to be delivered up to the performer.

[6/98;38/99;52/2004]

(5) No order shall be made under subsection (4) unless the court also makes, or it appears to the court that there are grounds for making, an order under section 254.

[6/98]

(6) A performer to whom an unauthorised recording or other object is delivered up pursuant to an order made under subsection (4) shall, if an order under section 254 is not made, retain the recording or object pending the making of an order, or the decision not to make an order, under that section.

[6/98]

[Aust. 1968, s. 248]

Presumptions in relation to performance

253A. —(1) Where the name of a person appears on copies of a recording of a performance, as made available to the public, in such a way as to imply that the person is the performer of the performance, and that name is his true name or a name by which he is commonly known, the person shall, in an action brought by virtue of this Part, be presumed, unless the contrary is established, to be the performer of the performance embodied in the recording.

[52/2004]

(2) Where the name of a group of performers appears on copies of a recording of a performance, as made available to the public, in such a way as to imply that the group performed in the performance embodied in the recording, and that name is the true name of the group or a name by which the group is commonly known, the group shall, in an action brought by virtue of this Part, be presumed, unless the contrary is established, to have performed in the performance embodied in the recording.

[52/2004]

Order for disposal of unauthorised recordings or other object

254. —(1) An application may be made to the court for an order that an unauthorised recording or other object delivered up pursuant to an order made under section 253 shall be —

- (a) forfeited to the performer; or
- (b) destroyed or otherwise dealt with as the court thinks fit.

[6/98]

(2) In considering what order, if any, should be made under this section, the court shall have regard to —

- (a) whether other remedies available in an action for an unauthorised use of a performance would be adequate to compensate the performer and to protect the interests of that performer; and
- (b) the need to ensure that no unauthorised recording is disposed of in a manner that would adversely affect a performer.

[6/98]

(3) The court shall issue directions as to the service of notice on persons having an interest in the recording or other object.

[6/98]

(4) Any person having an interest in the recording or other object is entitled —

- (a) to appear in proceedings for an order under this section, whether or not he is served with notice; and
- (b) to appeal against any order made, whether or not he appears in the proceedings.

(5) An order made under this section shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

[6/98]

(6) Where there is more than one person interested in a recording or other object, the court may direct that the recording or object be sold, or otherwise dealt with, and the proceeds divided, and shall make any other order as it thinks just.

[6/98]

(7) If the court decides that no order should be made under this section, the person in whose possession the recording or other object was before being delivered up is entitled to its return and the court may order the defendant to pay to the performer such damages as the court thinks just or equitable.

[6/98]

Offences

254A. —(1) A person who, at any time on or after 15th December 1999 and during the protection period of a performance —

- (a) makes for sale or hire;
 - (b) sells or lets for hire, or by way of trade offers or exposes for sale or hire; or
 - (c) by way of trade exhibits in public,
- any recording which he knows, or ought reasonably to know, to be an unauthorised recording of the performance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 for the recording or for each recording in respect of which the offence was committed or \$100,000, whichever is the lower, or to imprisonment for a term not exceeding 5 years or to both.

[38/99]

(2) A person who, at any time during the protection period of a performance, has in his possession, or imports into Singapore, any recording of a performance which he knows, or ought reasonably to know, to be an unauthorised recording of the performance, for the purpose of —

- (a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the recording;
- (b) distributing the recording for the purposes of trade; or
- (c) by way of trade exhibiting the recording in public,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 for the recording or for each recording in respect of which the offence was committed or \$100,000, whichever is the lower, or to imprisonment for a term not exceeding 5 years or to both.

[38/99]

(3) Any person who, at any time during the protection period of a performance, distributes for the purposes of trade recordings which he knows, or ought reasonably to know, to be unauthorised recordings of the performance, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.

[38/99]

(3A) Where, at any time during the protection period of a performance —

(a) a person does any act that constitutes an unauthorised use of the performance other than an act referred to in subsection (1), (2), (3), (5) or (6);

(b) the unauthorised use of the performance by the person is wilful; and

(c) either or both of the following apply:

(i) the extent of the unauthorised use is significant;

(ii) the person does the act to obtain a commercial advantage,

the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent offence, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.

[52/2004]

(4) A person who, at any time during the protection period of a performance, makes or has in his possession an article specifically designed or adapted for making recordings of the performance that the person knows, or ought reasonably to know, is to be used to make unauthorised recordings of the performance, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 for each such article in respect of which the offence is committed or to imprisonment for a term not exceeding 2 years or to both.

[38/99]

(5) A person who, at any time during the protection period of a performance, for his private profit and without the authority of the performer causes the performance to be seen or heard, or seen and heard, live in public, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

[38/99]

(6) A person who, at any time during the protection period of a performance, for his private profit and without the authority of the performer, causes a recording of the performance, being a recording which he knows or ought reasonably to know is an unauthorised recording, to be heard in public shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

[38/99]

(6A) For the purposes of subsection (3A) (c) (i), in determining whether the extent of the unauthorised use of a performance is significant, the court shall have regard to —

- (a) the volume of any articles that are unauthorised recordings of the performance;
- (b) the value of any articles that are unauthorised recordings of the performance;
- (c) whether the unauthorised use has a substantial prejudicial impact on the performer of the performance; and
- (d) all other relevant matters.

[52/2004]

(6B) For the purposes of subsection (3A) (c) (ii), a person does an act for the purpose of obtaining a commercial advantage if the act is done to obtain a direct advantage, benefit or financial gain for a business or trade carried on by him.

[52/2004]

(7) For the purposes of this section (other than subsection (3A)), any person who has in his possession 5 or more unauthorised recordings of a performance shall, unless the contrary is proved, be presumed —

- (a) to be in possession of such recordings otherwise than for private and domestic use; or
- (b) to be in possession of such recordings for the purpose of sale.

[38/99;52/2004]

(8) The court before which a person is charged with an offence under this section may, whether he is convicted of the offence or not, order that any article that appears to the court to be an unauthorised recording of a performance or any

article which has been used for making unauthorised recordings of a performance, in the possession of the alleged offender or before the court, be destroyed or delivered up to the performer concerned or otherwise dealt with in such manner as the court thinks fit.

[38/99;52/2004]

(9) If information is given upon oath to a court that there is reasonable cause for suspecting that there is in any premises any article or document which is evidence that an offence under subsection (1), (2), (3), (3A), (4), (5) or (6) has been committed, the court may issue, either unconditionally or subject to such conditions as the court thinks fit, a warrant authorising a police officer to enter and search the premises for the articles and documents which are specified in the warrant, whether specifically or in any general category, and to seize any such articles and documents found at the premises.

[52/2004]

(10) If an article was seized under subsection (9) and —

(a) in proceedings brought under this section in connection with the offence, no order is made under subsection (8) as to the article; or

(b) no such proceedings are instituted within 6 months of the seizure, the article shall be returned to the person in whose possession it was when it was seized or, if it is not reasonably practicable to return it to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities.

[38/99]

(11) If a document was seized under subsection (9) and no proceedings under this section are instituted within 6 months of the seizure, the document and all copies of the document shall be returned to the person in whose possession the document was when it was seized or, if it is not reasonably practicable to return the document and copies to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities.

[38/99]

(12) For the purposes of this section —

"document" means anything in which information of any description is recorded;
"premises" includes any land, building, structure and conveyance.

[38/99]

[Aust. 1968, ss. 248P and 248Q]

Application of sections 140A to 141

254B. —(1) Sections 140A to 141 shall apply, with the necessary modifications, to copies of an unauthorised recording of a performance as those provisions apply in relation to copies of copyright material.

[52/2004]

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

- (a) a reference in those provisions to copyright material shall be read as a reference to an unauthorised recording of a performance the protection period of which has not expired;
- (b) a reference in those provisions to the owner of the copyright or the owner of the copyright in the copyright material shall be read as a reference to the performer of a performance embodied in an unauthorised recording;
- (c) a reference in those provisions to an action for infringement of copyright shall be read as a reference to an action for unauthorised use of a performance;
- (d) a reference in those provisions to infringing copies shall be read as a reference to copies of an unauthorised recording which were made without the authorisation of the performer; and
- (e) a reference in section 140B (6) to the subsequent owner of the copyright shall be read as a reference to a person to whom the right of a performer to bring an action under section 253 has been assigned.

[52/2004]

Rights to bring an action may be assigned

255. The right of a performer to bring an action may be assigned.

[6/98;38/99]

Application to foreign countries

256. —(1) The Minister may make regulations applying any of the provisions of this Part specified in the regulations, in relation to a country so specified, in any one or more of the following ways, so as to secure that those provisions —

- (a) apply in relation to performances given in that country as they apply in relation to performances given in Singapore;
- (b) apply in relation to persons who are citizens or nationals of that country as they apply in relation to persons who are citizens of Singapore;
- (c) apply in relation to persons who are resident in that country as they apply in relation to persons who are resident in Singapore.

[6/98]

(2) Regulations made under subsection (1) may apply the provisions of this Part

—

- (a) without exception or modification or subject to such exceptions or modifications as may be specified in the regulations; and
- (b) either generally or in relation to such classes of performances, or other classes of cases, as may be specified in the regulations.

[6/98]

(3) The Minister shall not make regulations applying any of the provisions of this Part in the case of a country, other than a country which is a party to a Convention relating to the protection of performers to which Singapore is also a party, unless the Minister is satisfied that, in respect of the performances to which those provisions relate, provision has been or will be made under the law of that country whereby adequate protection is or will be given to performers whose performances are protected under this Part.

[6/98]

[Aust. 1968, s. 248U]

Denial of protection to citizens of countries not giving adequate protection to Singapore performances

257. —(1) If it appears to the Minister that the law of a country does not give adequate protection to performances given in that country by a citizen of Singapore or a person resident in Singapore (whether the lack of protection relates to the nature of the performance or the nationality, citizenship or country of residence of its performer, or all of those matters), the Minister may, having regard to the nature and extent of the lack of protection involved, make regulations in relation to that country in accordance with subsection (2).

[6/98]y

(2) Regulations made for the purposes of this section may provide, either generally or in such cases as are specified in the regulations, that this Part shall not apply to performances given after a date specified in the regulations (which may be a date before 16th April 1998) if, at the time the performances were or are given, the performers were or are citizens or nationals of a country specified in the regulations, other than persons resident in Singapore.

[6/98]

[Aust. 1968, s. 248V]

PART XIII

RIGHTS MANAGEMENT INFORMATION

Interpretation of this Part

258. In this Part, unless the context otherwise requires —

"performance", "recording" and "unauthorised use" have the same meanings as in Part XII;

"rights management information" , in relation to a copy of a work or other subject-matter or a recording of a performance, means any of the following:

- (a) information which identifies the work, subject-matter or performance;
- (b) information which identifies the author of the work, the owner of copyright in a work or subject-matter or the performer of a performance;
- (c) information about the terms and conditions of use of the copy of the work or subject-matter or the recording of the performance;
- (d) any numbers or codes that represent the information referred to in paragraph (a), (b) or (c),

but excludes any information relating to a user of the copy of the work or subject-matter or the recording of the performance, such as the name, account, address or other contact information of, or pertaining to, the user.

[52/2004]

Application of this Part

259. —(1) This Part shall not apply to any act done for the service of the Government.

[38/99]

(2) Nothing in this Part shall affect —

- (a) any copyright subsisting in a work or other subject-matter;
 - (b) any right in relation to a performance or a recording thereof;
 - (c) any limitation on copyright in a work or other subject-matter, or on a right in relation to a performance or a recording thereof; or
 - (d) any defence to an action for infringement of copyright, or for an unauthorised use of a performance,
- under any provision of this Act.

[38/99]

Removal or alteration of rights management information

260. —(1) This section shall apply where rights management information in an electronic form —

- (a) is attached to or embodied in a copy of a work or other subject-matter in which copyright subsists or a recording of a performance; or
- (b) appears in connection with the communication or making available to the public of a copy of a work or other subject-matter or a recording of a performance.

[52/2004]

(2) Where a person —

- (a) knowingly removes or alters the rights management information relating to any work or other subject-matter or recording of a performance;
- (b) does so without the consent of —
 - (i) the owner or exclusive licensee of the copyright in the work or subject-matter;or
- (ii) the performer of the performance; and
- (c) knows or ought reasonably to know that the removal or alteration of the rights management information will induce, enable, facilitate or conceal —
 - (i) an infringement of the copyright of the work or subject-matter; or

(ii) an unauthorised use of the performance,
an action may be brought by the owner or exclusive licensee of the copyright or the performer against the person.

[52/2004]

(3) Where a person —

(a) distributes or imports for distribution the rights management information relating to any work or other subject-matter or any recording of a performance, being rights management information which has been altered without the consent of —

(i) the owner or exclusive licensee of the copyright in the work or subject-matter;
or

(ii) the performer of the performance;

(b) does so without the consent of the owner or exclusive licensee of the copyright or the performer;

(c) does so knowing that the rights management information has been altered without the consent of the owner or exclusive licensee of the copyright or the performer; and

(d) knows or ought reasonably to know that the distribution or importation of the rights management information will induce, enable, facilitate or conceal —

(i) an infringement of the copyright in the work or subject-matter; or

(ii) an unauthorised use of the performance,

to which the rights management information relates,

an action may be brought by the owner or exclusive licensee of the copyright or the performer against the person.

[52/2004]

(4) Where a person —

(a) distributes, imports for distribution, communicates or makes available to the public copies of a work or other subject-matter or a recording of a performance in respect of which the rights management information has been removed or altered without the consent of —

(i) the owner or exclusive licensee of the copyright in the work or subject matter;
or

(ii) the performer of the performance;
(b) does so without the consent of the owner or exclusive licensee of the copyright or the performer;
(c) does so knowing that the rights management information has been removed or altered without the consent of the owner or exclusive licensee of the copyright or the performer; and
(d) knows or ought reasonably to know that the distribution, importation, communication or making available to the public of the copies of the work or subject-matter or the recording of the performance will induce, enable, facilitate or conceal —
(i) an infringement of the copyright in the work or subject-matter; or
(ii) an unauthorised use of a performance,
an action may be brought by the owner or exclusive licensee of the copyright or the performer against the person.

[52/2004]

(5) An action shall not be brought in respect of any act referred to in subsection (2), (3) or (4) after the expiration of 6 years from the time when the act took place.

[52/2004]

(6) Subject to subsection (7), where a person does an act referred to in subsection (2), (3) or (4) —
(a) wilfully; and
(b) for the purpose of obtaining any commercial advantage or private financial gain,
he shall be guilty of an offence and shall be liable on conviction —
(i) in the case of an act referred to in subsection (2), to a fine not exceeding \$20,000; or
(ii) in the case of an act referred to in subsection (3) or (4), to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

[52/2004;22/2005]

(7) Subsection (6) shall not apply to any act done by or on behalf of a non-profit library, any non-profit archives, an educational institution, an institution assisting handicapped readers, an institution assisting intellectually handicapped readers, or such public, non-commercial broadcasting organisation as the Minister may prescribe.

[52/2004]

(8) For the purposes of subsection (6), a person does an act for the purpose of obtaining a commercial advantage if the act is done to obtain a direct advantage, benefit or financial gain for a business or trade carried on by him.

[52/2004]

[Aust. 1968, ss. 116B, 116C and 116CA]

Relief which court may grant

261. —(1) In an action brought under section 260, the types of relief that the court may grant if it is satisfied that the defendant has carried out or is carrying out an act referred to in section 260 (2), (3) or (4) (referred to in this section as a relevant act) include the following:

- (a) an injunction (subject to such terms, if any, as the court thinks fit);
- (b) damages;
- (c) an account of profits;
- (d) where the plaintiff has elected for an award of statutory damages in lieu of damages or an account of profits, statutory damages of not more than \$20,000.

[52/2004]

(2) When the court awards any damages under subsection (1) (b) in respect of a relevant act, the court may also make an order under subsection (1) (c) for an account of any profits attributable to the relevant act that have not been taken into account in computing the damages.

[52/2004]

(3) Except as provided for in subsection (2), the types of relief referred to in subsection (1) (b), (c) or (d) are mutually exclusive.

[52/2004]

(4) In awarding statutory damages under subsection (1) (d) in respect of any relevant act, the court shall have regard to —

- (a) the nature or purpose of the act concerned, including whether the act was of a commercial nature or otherwise;
- (b) the flagrancy of the act;
- (c) whether the defendant acted in bad faith;
- (d) any loss that the plaintiff has suffered or is likely to suffer by reason of the act;
- (e) any benefit shown to have accrued to the defendant by reason of the act;
- (f) the conduct of the parties before and during the proceedings;
- (g) the need to deter other similar acts; and
- (h) all other relevant matters.

[52/2004]

(5) In addition to the relief referred to in subsection (1), the court may order that any article —

- (a) by means of which, or in relation to which, a relevant act was or is being carried out; and
- (b) which is in the possession of the defendant or before the court, be delivered up to the plaintiff or destroyed.

[52/2004]

[Aust. 1968, s. 116D]

Enforcement measures

261A. —(1) The court before which a person is charged with an offence under section 260 (6) may, whether he is convicted of the offence or not, order that any article that appears to the court to be —

- (a) a copy of a work or other subject-matter or a recording of a performance in respect of which the rights management information has been altered or removed without the consent of the owner or exclusive licensee of the work or other subject-matter or the performer of the performance, as the case may be; or
 - (b) used predominantly for removing or altering the rights management information in respect of any work or other subject-matter or any recording of a performance,
- in the possession of the alleged offender or before the court, be destroyed or delivered up to the owner or exclusive licensee of the copyright concerned or the

performer of the performance, as the case may be, or otherwise dealt with in such manner as the court thinks fit.

[52/2004]

(2) If information is given upon oath to a court that there is reasonable cause for suspecting that there is in any premises any article or document which is evidence that an offence under section 260 (6) has been committed, the court may issue, either unconditionally or subject to such conditions as the court thinks fit, a warrant authorising a police officer to enter and search the premises for the articles and documents which are specified in the warrant, whether specifically or in any general category, and to seize any such articles and documents found at the premises.

[52/2004]

(3) If an article was seized under subsection (2) and —

(a) in proceedings brought under section 260 (6), no order is made as to the disposal of the article, whether under subsection (1) or otherwise; or

(b) no such proceedings are instituted within 6 months of the seizure, the article shall be returned to the person in whose possession it was when it was seized or, if it is not reasonably practicable to return it to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities.

[52/2004]

(4) If a document was seized under subsection (2) and no proceedings under section 260 (6) are instituted within 6 months of the seizure, the document and all copies of the document shall be returned to the person in whose possession the document was when it was seized or, if it is not reasonably practicable to return the document and copies to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities.

[52/2004]

(5) In this section —

"document" means anything in which information of any description is recorded;

"premises" includes any land, building, structure and conveyance.

PART XIII

CIRCUMVENTION OF TECHNOLOGICAL MEASURES

Interpretation and effect of application of this Part

261B. —(1) In this Part, unless the context otherwise requires —

"circumvent" means to avoid, bypass, remove, deactivate, descramble (where the copy is scrambled), decrypt (where the copy is encrypted) or otherwise impair;

"copy" , in relation to any work or other subject-matter or any performance, means a copy of the work or subject-matter or of a recording of the performance, and includes the original version of the work or subject-matter or a recording of the performance;

"encryption technology" means technology for scrambling and descrambling information using mathematical formulae or algorithms;

"non-profit" means not operated or conducted for profit;

"performance", "protection period", "recording" and "unauthorised use" have the same meanings as in Part XII;

"personally identifying information" means information which can be used to identify persons using a network;

"technological access control measure" means any technology, device or component that, in the normal course of its operation, effectively controls access to a copy of —

(a) a work or other subject-matter; or

(b) a performance,

but excludes such technology, device or component as the Minister may prescribe;

"technological measure" means a technological access control measure or a technological protection measure;

"technological protection measure" means any technology, device or component that, in the normal course of its operation, effectively prevents or limits the doing of —

(a) in relation to a copy of a work or other subject-matter, any act comprised in the copyright in the work or subject-matter; or
(b) in relation to a copy of a performance, an unauthorised use of the performance,
but excludes such technology, device or component as the Minister may prescribe.

[52/2004]

(2) Nothing in this Part shall affect any act done in relation to a work or other subject-matter in which copyright no longer subsists, or in relation to a performance the protection period of which has expired.

[52/2004]

(3) Nothing in this Part shall affect —

- (a) any copyright subsisting in a work or other subject-matter;
- (b) any right in relation to a performance or a recording thereof;
- (c) any limitation on copyright in a work or other subject-matter, or on a right in relation to a performance or a recording thereof; or
- (d) any defence to an action for infringement of copyright, or for an unauthorised use of a performance,
under any provision of this Act.

[52/2004]

Circumvention of technological measures

261C. —(1) Subject to sections 261D and 261E, where a technological measure is applied to a copy of a work or other subject-matter by or with the authorisation of the owner of the copyright in the work or subject-matter in connection with the exercise of the copyright, or to a copy of a performance by or with the authorisation of the performer of the performance in connection with the exercise of any right in the performance, no person shall, without the authorisation of the owner of the copyright or the performer of the performance, as the case may be —

- (a) if the technological measure is a technological access control measure, do any act which he knows or ought reasonably to know circumvents the technological measure;

(b) manufacture, import, distribute, offer to the public, provide or otherwise traffic in any device, product or component which —

(i) is promoted, advertised or marketed for the purpose of circumventing the technological measure;

(ii) has only a limited commercially significant purpose or use other than to circumvent the technological measure; or

(iii) is designed or made primarily for the purpose of circumventing the technological measure;

(c) offer to the public or provide any service which —

(i) is promoted, advertised or marketed for the purpose of circumventing the technological measure;

(ii) has only a limited commercially significant purpose or use other than to circumvent the technological measure; or

(iii) is performed primarily for the purpose of circumventing the technological measure.

[52/2004]

(2) An action may be brought by the owner of the copyright or the performer of the performance against a person who contravenes subsection (1).

[52/2004]

(3) An action shall not be brought under subsection (2) in respect of any contravention of subsection (1) after the expiration of 6 years from the time when the contravention took place.

[52/2004]

(4) Where a person contravenes subsection (1) (a) wilfully and for the purpose of obtaining a commercial advantage or private financial gain, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

[52/2004;22/2005]

(5) Where a person contravenes subsection (1) (b) or (c) wilfully and for the purpose of obtaining a commercial advantage or private financial gain, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

[52/2004;22/2005]

(6) For the purposes of subsection (5), a person shall not be treated as having contravened subsection (1) (b) wilfully unless —

(a) in the case of a device, product or component referred to in subsection (1) (b) (i), he had himself —

(i) promoted, advertised or marketed it; or

(ii) authorised the promotion, advertising or marketing of it,
for the purpose of circumventing the technological measure;

(b) in the case of a device, product or component referred to in subsection (1) (b) (ii), he knew or had reason to believe at the time of the contravention that it had only a limited commercially significant purpose or use other than to circumvent the technological measure; or

(c) in the case of a device, product or component referred to in subsection (1) (b) (iii), he knew or had reason to believe at the time of the contravention that it was designed or made primarily for the purpose of circumventing the technological measure.

[52/2004]

(7) For the purposes of subsection (5), a person shall not be treated as having contravened subsection (1) (c) wilfully unless —

(a) in the case of a service referred to in subsection (1) (c) (i), he had himself —

(i) promoted, advertised or marketed it; or

(ii) authorised the promotion, advertising or marketing of it,
for the purpose of circumventing the technological measure;

(b) in the case of a service referred to in subsection (1) (c) (ii), he knew or had reason to believe at the time of the contravention that it had only a limited commercially significant purpose or use other than to circumvent the technological measure; or

(c) in the case of a service referred to in subsection (1) (c) (iii), he had himself —

(i) performed it; or

(ii) authorised the performance of it,
primarily for the purpose of circumventing the technological measure.

[52/2004]

(8) For the purposes of subsections (4) and (5), a person does an act for the purpose of obtaining a commercial advantage if the act is done to obtain a direct advantage, benefit or financial gain for a business or trade carried on by him.

[52/2004]

(9) Subsections (4) and (5) shall not apply to any act done by or on behalf of a non-profit library, any non-profit archives, an educational institution, an institution assisting handicapped readers, an institution assisting intellectually handicapped readers, or such public, non-commercial broadcasting organisation as the Minister may prescribe.

[52/2004]

(10) This section does not affect the import or sale of a device that does not render effective a technological measure whose sole purpose is to control market segmentation for access to cinematograph films, if the import or sale of the device does not otherwise contravene any written law including this Act.

[52/2004]

[Aust. 1968, s. 132 (5A) and (5B)]

Exceptions to prohibition on circumvention

261D. —(1) Subject to subsection (3), section 261C (1) (a) is not contravened by the doing of an act to circumvent a technological measure if —

(a) the act is done to enable a non-profit library, any non-profit archives, an educational institution, an institution assisting handicapped readers, or an institution assisting intellectually handicapped readers to have access to a work or other subject-matter or recording of a performance which is not otherwise available to the library, archives or institution, for the sole purpose of determining whether to acquire a copy of the work or other subject-matter or recording;

(b) the technological measure has the capability to collect or disseminate personally identifying information to reflect the manner of use of a network by persons without providing conspicuous notice of such collection or dissemination to those persons, and the act is done for the sole purpose of identifying and disabling the technological measure, provided that the act does not affect the ability of any person to gain access to any work or other subject-matter or recording of any performance;

(c) the act is done in relation to a work or other subject-matter or performance that is prescribed by the Minister under subsection (2) —

(i) by a person prescribed under subsection (2A) or (if none is prescribed) by any person; and

(ii) for a purpose prescribed under subsection (2A) or (if none is prescribed) for any purpose;

(d) the act is done —

(i) in good faith;

(ii) in relation to a copy of a computer program that is not an infringing copy; and

(iii) with respect to particular elements of the computer program that are not readily available to the person doing the act,

for the sole purpose of achieving interoperability of an independently created computer program with another computer program;

(e) the act is done when undertaking research on any encryption technology, provided that —

(i) the person doing the act —

(A) is engaged in a legitimate course of study in the field of encryption technology;

(B) is employed or appropriately trained or experienced in that field; or

(C) is doing so on behalf of a person so engaged, employed, trained or experienced;

(ii) the act is necessary to conduct such research;

(iii) the act is done in good faith and in relation to a copy of the work or subject-matter that is not an infringing copy thereof or a copy of the performance that is not an unauthorised recording thereof; and

(iv) the person doing the act has made a reasonable effort to obtain the authorisation of the owner of the copyright in the work or subject-matter or the performer of the performance to do the act;

(f) the act consists of the inclusion of a component or part in any technology, product or device for the sole purpose of preventing access by minors to any

material on the Internet, provided that the technology, product or device is not prohibited under section 261C (1) (b);

(g) the act is done by or under the authority of the owner of a computer, computer system or computer network for the sole purpose of testing, investigating, or correcting a security flaw or vulnerability of that computer, computer system or computer network; or

(h) the act is carried out by the Government or by any person authorised by the Government for the purpose of law enforcement, intelligence, national defence, essential security or other similar purpose.

[52/2004]

(2) The Minister may, by order published in the *Gazette*, exclude the operation of section 261C (1) (a) in relation to a specified work or other subject-matter or performance, or a specified class of works or other subject-matters or performances, if he is satisfied that any dealing with the work, subject-matter or performance or with the class of works, subject-matters or performances, being a dealing which does not amount to an infringement of copyright therein or an unauthorised use thereof (as the case may be), has been or is likely to be adversely impaired or affected as a result of the operation of this section.

[52/2004]

(2A) The order referred to in subsection (2) may specify —

(a) the person or class of persons who may carry out the act of circumvention of a technological measure in relation to the work, subject-matter or performance or the class of works, subject-matters or performances; and

(b) the purpose of carrying out the act.

(3) Subsection (1) shall not apply if —

(a) in the case of an act referred to in paragraph (b), (e) or (g) of that subsection, the act violates a provision of any written law other than this Act;

(b) in the case of an act referred to in paragraph (c), (d), (e) or (g) of that subsection, the act infringes the copyright in the work or other subject-matter or amounts to an unauthorised use of the performance; or

(c) in the case of an act referred to in paragraph (a) of that subsection, the act leads to an infringement of the copyright in the work or other subject-matter or

to an unauthorised use of the performance, or otherwise violates a provision of any other written law.

[52/2004]

[Aust. 1968, s. 116C]

Exceptions to prohibition on making, etc., circumventing device and offering circumventing service

261E. —(1) Subject to subsections (2) and (3), section 261C (1) (b) and (c) is not contravened by the doing of any of the following:

(a) the manufacture, importation, distribution, offering to the public or provision of a device, product or component, or the offering to the public or provision of a service, to carry out an act to circumvent a technological measure that is done —

(i) in good faith;

(ii) in relation to a copy of a computer program that is not an infringing copy; and

(iii) with respect to particular elements of the computer program that are not readily available to the person doing the act,

for the sole purpose of achieving interoperability of an independently created computer program with another computer program;

(b) the manufacture, importation, distribution, offering to the public or provision of a device, product or component, or the offering to the public or provision of a service, to carry out an act to circumvent a technological measure referred to in section 261D (1) (e);

(c) the manufacture, importation, distribution, offering to the public or provision of a component or part referred to in section 261D (1) (f);

(d) the manufacture, importation, distribution, offering to the public or provision of a device, product or component, or the offering to the public or provision of a service, to carry out an act to circumvent a technological measure referred to in section 261D (1) (g);

(e) an act carried out by the Government or by any person authorised by the Government for the purpose of law enforcement, intelligence, national defence, essential security or other similar purpose.

[52/2004]

(2) Paragraphs (b), (c) and (d) of subsection (1) apply only if the technological measure is a technological access control measure.

[52/2004]

(3) Subsection (1) shall not apply if —

(a) in the case of an act referred to in paragraph (a) of that subsection, the circumvention referred to in that paragraph infringes the copyright in the work or other subject-matter or amounts to an unauthorised use of the performance; or

(b) in the case of an act referred to in paragraph (b) or (d) of that subsection, the circumvention referred to in that paragraph infringes the copyright in the work or other subject-matter or amounts to an unauthorised use of the performance, or otherwise violates a provision of any other written law.

[52/2004]

Relief which court may grant

261F. —(1) In an action brought under section 261C (2), the types of relief that the court may grant, if it is satisfied that the defendant has contravened section 261C (1), include —

(a) an injunction (subject to such terms, if any, as the court thinks fit); and

(b) either of the following:

(i) damages;

(ii) where the plaintiff has elected for an award of statutory damages in lieu of damages, statutory damages of not more than \$20,000.

[52/2004]

(2) In addition to the relief referred to in subsection (1), the court may order that any article —

(a) by means of which, or in relation to which, the act giving rise to the contravention of subsection 261C (1) was or is being carried out; and

(b) which is in the possession of the defendant or before the court, be delivered up to the plaintiff or destroyed.

[52/2004]

(3) For the purposes of subsection (1) (b) (i), damages include any profits that are attributable to the act giving rise to the contravention of subsection 261C (1).

[52/2004]

(4) In awarding statutory damages under subsection (1) (b) (ii), the court shall have regard to —

- (a) the nature or purpose of the act concerned, including whether the act was of a commercial nature or otherwise;
- (b) the flagrancy of the act;
- (c) whether the defendant acted in bad faith;
- (d) any loss that the plaintiff has suffered or is likely to suffer by reason of the act;
- (e) any benefit shown to have accrued to the defendant by reason of the act;
- (f) the conduct of the parties before or during the proceedings;
- (g) the need to deter other similar acts; and
- (h) all other relevant matters.

[52/2004]

(5) Notwithstanding subsection (1), where, in an action for a contravention of section 261C (1) (b), such contravention is established but it is also established that —

- (a) in the case of a device, product or component referred to in section 261C (1) (b) (i), the defendant did not himself promote, advertise or market it, or authorise the promotion, advertising or marketing of it, for the purpose of circumventing the technological measure;
 - (b) in the case of a device, product or component referred to in section 261C (1) (b) (ii), at the time of the contravention, the defendant was not aware, and had no reasonable grounds for suspecting, that it had only a limited commercially significant purpose or use other than circumventing the technological measure; or
 - (c) in the case of a device, product or component referred to in section 261C (1) (b) (iii), at the time of the contravention, the defendant was not aware, and had no reasonable grounds for suspecting, that it was designed or made primarily for the purpose of circumventing the technological measure,
- the plaintiff shall not be entitled, as against the defendant, to any damages or statutory damages for the contravention.

[52/2004]

(6) Notwithstanding subsection (1), where, in an action for a contravention of section 261C (1) (c), such contravention is established but it is also established that —

(a) in the case of a service referred to in section 261C (1) (c) (i), the defendant did not himself promote, advertise or market it, or authorise the promotion, advertising or marketing of it, for the purpose of circumventing the technological measure;

(b) in the case of a service referred to in section 261C (1) (c) (ii), at the time of the contravention, the defendant was not aware, and had no reasonable grounds for suspecting, that it had only a limited commercially significant purpose or use other than to circumvent the technological measure; or

(c) in the case of a service referred to in section 261C (1) (c) (iii), the defendant did not himself perform it, or authorise the performance of it, primarily for the purpose of circumventing the technological measure,

the plaintiff shall not be entitled to any damages or statutory damages against the defendant for the contravention.

[52/2004]

[Aust. 1968, s. 116D]

Enforcement measures

261G. —(1) The court before which a person is charged with an offence under section 261C (4) or (5) may, whether he is convicted of the offence or not, order that any article that appears to the court to be used predominantly for circumventing a technological measure used in connection with —

(a) the exercise of the copyright in a work or other subject-matter by the owner of the copyright; or

(b) any right in a performance by the performer of the performance, in the possession of the alleged offender or before the court, be destroyed or delivered up to the owner or exclusive licensee of the copyright concerned or the performer of the performance, as the case may be, or otherwise dealt with in such manner as the court thinks fit.

[52/2004]

(2) If information is given upon oath to a court that there is reasonable cause for suspecting that there is in any premises any article or document which is evidence that an offence under section 261C (4) or (5) has been committed, the court may issue, either unconditionally or subject to such conditions as the court thinks fit, a warrant authorising a police officer to enter and search the premises for the articles and documents which are specified in the warrant, whether specifically or in any general category, and to seize any such articles and documents found at the premises.

[52/2004]

(3) If an article was seized under subsection (2) and —
(a) in proceedings brought under section 261C (4) or (5), no order is made as to the disposal of the article, whether under subsection (1) or otherwise; or
(b) no such proceedings are instituted within 6 months of the seizure, the article shall be returned to the person in whose possession it was when it was seized or, if it is not reasonably practicable to return it to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities.

[52/2004]

(4) If a document was seized under subsection (2) and no proceedings under section 261C (4) or (5) are instituted within 6 months of the seizure, the document and all copies of the document shall be returned to the person in whose possession the document was when it was seized or, if it is not reasonably practicable to return the document and copies to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities.

[52/2004]

(5) In this section —

"document" means anything in which information of any description is recorded;
"premises" includes any land, building, structure and conveyance.

[52/2004]

PART XIV

TRANSITIONAL PROVISIONS UNDER INTELLECTUAL PROPERTY (MISCELLANEOUS AMENDMENTS) ACT 2004

Interpretation of this Part

262. In this Part —

"appointed day" means 1st July 2004;

"performance" has the same meaning as in section 246.

[21/2004]

Works published before appointed day

263. —(1) Copyright shall not subsist by virtue of Part III in any work first published before the appointed day unless copyright subsisted in that work immediately before that day under that Part in force immediately before that day.

[21/2004]

(2) Section 212 shall not apply in relation to any photograph first taken before 10th April 1987 unless copyright subsisted in that photograph immediately before the appointed day under Part III and that section in force immediately before that day.

[21/2004]

Other subject-matter published before appointed day

264. —(1) Copyright shall not subsist by virtue of Part IV in any sound recording or cinematograph film first published before the appointed day unless copyright subsisted in such recording or film immediately before that day under that Part in force immediately before that day.

[21/2004]

(2) Section 219 (4) shall not apply in relation to any sound recording made before 10th April 1987 unless copyright subsisted in that recording immediately before the appointed day under sections 87 (1) or (3) and 219 (4) in force immediately before that day.

[21/2004]

Works and other subject matter published by international organisations before appointed day

265. Copyright shall not subsist by virtue of section 185 in any work, sound recording or cinematograph film first published before the appointed day unless

copyright subsisted in such work, recording or film immediately before that day under that section in force immediately before that day.

[21/2004]

Works and other subject matter published by Government before appointed day

266. —(1) Subject to subsections (2), (3) and (4), copyright shall not subsist by virtue of section 197 in any literary, dramatic or musical work, sound recording or cinematograph film first published or any artistic work made before the appointed day unless copyright in such work, recording or film subsisted immediately before that day under that section in force immediately before that day.

[21/2004]

(2) Copyright shall not subsist by virtue of section 197 in any photograph taken before 10th April 1987 unless copyright subsisted in that photograph immediately before that day under that section, as modified by section 231, in force immediately before that day.

[21/2004]

(3) Copyright shall not subsist by virtue of section 197 in any sound recording made before 10th April 1987 unless copyright subsisted in that recording immediately before the appointed day under that section, as modified by section 232, in force immediately before that day.

[21/2004]

(4) Copyright shall not subsist by virtue of section 197 in any cinematograph film made before 10th April 1987 unless copyright subsisted in that film immediately before the appointed day under that section in force immediately before that day in accordance with section 233.

[21/2004]

Performances given before appointed day

267. Part XII shall not apply to a performance given before the appointed day unless the period beginning on the day when the performance was given and ending on the appointed day is less than the protection period as defined in section 246 (1) in force immediately before the appointed day.

[21/2004]

PART XV

SAVINGS AND TRANSITIONAL PROVISIONS UNDER COPYRIGHT (AMENDMENT) ACT 2004

Interpretation of this Part

268. In this Part —

"amendment Act" means the Copyright (Amendment) Act 2004;

"appointed day" means 1st January 2005;

"performance" has the same meaning as in section 246 (1).

[52/2004]

Assignments and licences before appointed day

269. Where any licence has been granted, or any contract or arrangement (including any assignment of copyright) has been entered into, before the appointed day, being a licence, contract or arrangement relating to —

(a) the broadcast of a work or other subject-matter; or

(b) the inclusion of a work or other subject-matter in a cable programme,

the licence, contract or arrangement shall, subject to any contrary intention, continue to have effect on or after that day in accordance with the provisions of this Act in force immediately before that day, as if the amendment Act had not been enacted.

[52/2004]

Action for infringement which took place before appointed day

270. Section 119, as it was in force immediately before the appointed day, shall apply to an action brought in respect of any infringement of copyright which took place before that day as if the amendment Act had not been enacted.

[52/2004]

Action for unauthorised use before appointed day

271. Section 253, as it was in force immediately before the appointed day, shall apply to an action brought in respect of any unauthorised use of a performance which took place before that day as if the amendment Act had not been enacted.

[52/2004]

Action relating to rights management information

272. Section 261 shall only apply to an action brought in respect of any act referred to in section 260 (2), (3) or (4) which is carried out on or after the appointed day, and section 261, as it was in force immediately before that day, shall continue to apply to an action brought in respect of any act referred to in section 260 as it was in force immediately before that day which is carried out before that day as if the amendment Act had not been enacted.

[52/2004]